

WESTTOWN TOWNSHIP
PLANNING COMMISSION MEETING AGENDA
Wednesday, February 21, 2024 – 7:00 pm

Stokes Assembly Hall – Township Administration Building
1039 Wilmington Pike, West Chester, PA

For general inquiries or questions about any of the items on this agenda, please contact the Township office either by phone (610) 692-1930 or via e-mail at administration@westtown.org.

Call to Order and Pledge of Allegiance

Adoption of Agenda

Approval of Minutes

Planning Commission Meeting February 7, 2024

Announcements

1. The ZHB hearing for special exception and variance requests for 1115 S Concord Road has been rescheduled for March 28, 2024.

Public Comment – Non-Agenda Items

New Business

1. Debriefing on Joint Meeting

The Planning Commission will discuss the feedback received from the Board on their planned activities and priorities for 2024.

2. Planning Commission Function and Responsibilities

Review of the statutory authority, specific powers and duties of the planning commission authorized by the Pennsylvania Municipalities Planning Code.

3. Update on Pending Projects

The Township staff will provide an update on the land development and conditional use applications currently pending and/or already approved or denied.

4. Update on the Environmental Rights Amendment to the Pennsylvania Constitution

Jack Embick, Planning Commission Chair, will provide an update on Article I, Section 27 of the Pennsylvania Constitution.

Old Business

Public Comment

Reports

1. Board of Supervisors Meeting February 20, 2024 – Brian Knaub/Joe Frisco

Adjournment

Next PC Meeting:

- **March 6, 2024, 7:00 PM**

PC Representative at next Board of Supervisors Meeting:

- **Monday March 4, 2024, 7:30 PM** – Russ Hatton/Jack Embick

WESTTOWN TOWNSHIP PLANNING COMMISSION MEETING MINUTES

Stokes Assembly Hall, 1039 Wilmington Pike
Wednesday, February 7, 2024 – 7:00 PM

Present

Commissioners – Russ Hatton (RH), Jack Embick (JE), Jim Lees (JL), Brian Knaub (BK), Kevin Flynn (KF), and Joseph Frisco (JF) were present. Tom Sennett (TS) was absent. Also present was Director of Planning & Zoning Mila Carter.

Call to Order and Pledge of Allegiance

Mr. Embick called the meeting to order at 7:03 PM.

Adoption of Agenda (RH/JL) 6-0

Mr. Hatton made a motion to adopt the agenda. Mr. Lees seconded. All were in favor of the motion.

Approval of Minutes (RH/JL) 5-0-1

Mr. Hatton made a motion to adopt the meeting minutes from January 17, 2024. Mr. Lees seconded. Mr. Flynn abstained due to his absence at that meeting. All were in favor of the motion.

Announcements

1. Ms. Carter announced that the public hearing for amendments to Chapter 170, Article XVII, Off-Street Parking and Loading has been scheduled for February 20, 2024.
2. Ms. Carter also announced that the public hearing for amendments to Chapter 63, Open Burning has been scheduled for February 20, 2024.
3. Ms. Carter also clarified that the Zoning Hearing Board (ZHB) hearing for 1115 S. Concord Road has been scheduled for March 14, 2024.

Public Comment – Non Agenda Items

1. Colin Chavous, 1001 S Walnut Street, asked about the progress on his ZHB application and explained that he would like to propose a six-foot privacy fence to address the concerns raised by neighbors on Broadway Street. He suggested to provide screening by planting 7-foot high trees every 4 feet, which would grow up to 20 feet high. Mr. Embick explained that the hearing had been closed and the decision was in the hands of the Zoning Hearing Board. Ms. Carter added that she would contact Mr. Chavous regarding when the written decision will be issued.

New Business

1. ZHB Application – 1115 S Concord Road

David Brown, 1115 S Concord Road, explained that he has submitted an application to request special exception for construction of an accessory dwelling unit and a variance to encroach 10 feet into the mandated side yard setback. His proposal included the construction of a detached 2-car garage with an accessory dwelling unit above it for his wife's parents. Mr. Brown described his property of more than 1 acre with the house very close to one side property line. He clarified that a new building was proposed to be approximately 15 feet from the side property line and not 10 feet as was noted on the submitted plan, and would be connected to the house via breezeway. Mr. Brown showed that if placed within the required setback of 25 feet, the garage would end up behind the house. He referred to pictures that show substantial exterior renovation that has been completed since he purchased it. Mr.

Embick explained the process for granting of special exception and variances and directed Mr. Brown's attention to the criteria which he should be prepared to address before the ZHB. He also questioned whether or not the applicant met the hardship requirement. Mr. Brown believed that the hardship is that the chosen location is the only suitable placement of the new building due to layout of the lot and existing house and driveway.

Mr. Lees asked whether Mr. Brown talked to his neighbor along the property line where the setback relief was needed and asked Mr. Brown to verify the number of proposed bedrooms. Mr. Brown clarified that only one bedroom was proposed with another room being used as an office space without a closet. Mr. Lees pointed out that the application package included the first page of the approved on-lot sewage permit from the Chester County Health Department (CCHD), but no site plan, and asked whether a new system would be built to accommodate the ADU. Mr. Brown explained that a new system was installed when he purchased the property over 2 years ago and that the addition of the ADU only requires an adjustment to the size of existing drainfield. He noted the location of septic tank and drainfield on the site plan. Mr. Brown also verified that it was a traditional seepage bed. Mr. Flynn asked whether the applicant could decrease the size of the building. Mr. Brown explained that it was meant to provide a quality space for his parents-in-law. Mr. Lees asked about the number of cars and access to garages. Mr. Brown believed there was enough space for parking and access.

Mr. Flynn asked whether a separate street address would be needed for the ADU. Ms. Carter did not think so, considering that it would be accessible via same driveway. Ms. Carter also cautioned that if a breezeway was to be open on more than two sides, the garage would be considered detached and should comply with setbacks for accessory structures in which case a different variance would be needed. Mr. Lees asked whether the ADU would have a separate electric system. Mr. Brown did not believe to be the case.

Mr. Embick suggested reviewing the special exception and variance criteria to determine if the application meets those. He believed that the proposal was consistent with the Comprehensive Plan, the property was suitable for addition of a new building, there was an adequate sewer capacity, there was no significant impact on the character of the neighborhood and the proposal provided an economic benefit of increased property value. However, Mr. Embick did not believe that the owner could meet the hardship standards, because there was plenty of room to build a garage somewhere else on the property even though it might be inconvenient. He suggested that the applicants reevaluate the amount of dimensional variance needed, and to request the minimum necessary to accommodate a new building. Mr. Brown explained that with the 15-foot setback, a new building would only be 2 feet from the corner of the house, therefore, there was no opportunity to request smaller amount of relief without having to encroach behind the house.

Mr. Embick asked whether the Planning Commission was ready to make a motion. Mr. Flynn made a motion to recommend approval of the ZHB application for special exception to allow for the ADU, and to recommend denial of the same application for variance relief from the mandatory side yard setback because the Planning Commission did not believe there was sufficient ground for the variance request. Mr. Lees seconded. Mr. Knaub suggested that the Planning Commission not make any recommendation on the variance request. Mr. Embick asked whether the members would like to consider any conditions. Mr. Lees suggested that the applicant decrease the amount of needed relief. Mr. Embick suggested that the applicant consider legal guidance to assist at the hearing. Ms. Carter suggested that the applicant modify the plans and come back to the next meeting. Mr. Brown agreed to that. Motion was withdrawn.

2. ZHB Application – 109 Piper Lane

Steven Dinkel, 109 Piper Lane, explained that he has submitted an application to request a

variance to encroach 9 feet into the mandated swimming pool setback. Mr. Hatton asked whether Mr. Dinkel discussed the variance request with his neighbors. Mr. Dinkel responded that he contacted the neighbor along the property line where the relief was needed, and received positive feedback. Mr. Hatton suggested he get something in writing from the neighbor prior to the hearing. Mr. Hatton explained that the property was developed to avoid encroachment into riparian buffer and steep slopes and to accommodate placement of stormwater management facility. David Lisanti, the applicant's engineer, explained that the stormwater is being collected via underground drain pipes from the house and is directed into the seepage bed. He noted that based on the additional impervious coverage proposed, an additional stormwater management facility would be needed.

Mr. Dinkel explained that when he purchased the house, he was told by the builder that the lot was eligible for a pool. He argued that the size of the property was sufficient to accommodate a pool. Mr. Lees asked about the distance between the proposed pool and existing stormwater management facility. Mr. Lisanti explained that it would be installed at a sufficient distance, and talked about the proposed vegetative screening along the side of the property. Mr. Embick asked about the size of the proposed pool. Mr. Dinkel confirmed it would be about 700 square feet. Mr. Lees asked about setbacks between pool equipment and the property lines. Mr. Lisanti believed it would be 15 feet as required. Mr. Dinkel added that the pool equipment would be screened from view by plantings or other means. Mr. Hatton asked whether the applicant had considered a smaller pool and patio. Mr. Dinkel believed a 700 square foot size pool to be of an average size which would accommodate their family needs. He also explained that patio would be used as an outdoor gathering space. Mr. Embick asked whether the construction would have any implications on the existing and proposed underground seepage bed. Mr. Lisanti detailed how the runoff would be directed into a new system. He felt that the location of both existing seepage bed and storm manholes were the biggest obstacles to placing a pool. Mr. Lisanti believed that 85 to 90 per cent of pools in Chester County were between 550 to 800 square feet.

Mr. Embick asked about the inspections of the existing stormwater management easement. Ms. Carter confirmed that it was a part of the recorded subdivision plan and associated operation and maintenance agreement with the Township and the Homeowner's Association (HOA), where all such facilities were subject to inspections. She added that the applicant would have to submit a post-construction stormwater management plan for review and approval by the Township engineer. Mr. Flynn felt that if the applicant adjusted the pool size, then there would be no need for a variance. Mr. Embick suggested that the applicant could make a case for unnecessarily hardship because of the way the property was configured and existing constraints, such as the location and extent of steep slopes and a required 75-foot riparian buffer from the stream. He agreed with Mr. Flynn that the applicant could build a pool to comply with the required setback requirements and suggested the applicant consider reducing the amount of incursion into the setback. Mr. Lees suggested moving the pool closer to the house. There was a discussion on other potential layout options of the proposed pool to be in compliance with the Code. Mr. Embick asked whether the Township staff would like to impose any conditions. Ms. Carter expressed concern about the access to the existing stormwater management facility. There was a discussion on how the easement was currently accessed. Mr. Dinkel agreed to the condition pertaining to access.

Motion to recommend approval to the Zoning Hearing Board of the variance request to allow proposed pool to be set 16 feet from the side property line, with a condition that the access to the stormwater management facility be retained. JF/JL (6-0)

3. Planning Commission Report 2023

Mr. Embick referred to the report prepared by Mr. Hatton, which summarized the Planning Commission activities for the past year and proposed several priorities for this year. Mr.

Embick suggested for the report to be discussed with the Board of Supervisors at their scheduled workshop. He asked whether the PC members had any comments pertaining to the report and proposed priorities. Mr. Hatton wished that the discussions on ordinance amendments could be done quicker. Mr. Embick thought that the ordinance amendment process was very involved with many moving parts which required time. Mr. Flynn asked about the status of the conditional use application for a visual arts center at 1632 West Chester Pike. Ms. Carter responded that the Township has an extension until the end of March, and that there was no communication from the applicant. The PC members discussed the proposed priorities listed in the report. Mr. Hatton believed that changes to the flexible development procedures were long overdue. Mr. Embick expressed his support that the environmental impact assessment requirement be considered. Ms. Carter suggested a list of high priorities. Mr. Embick recited items related to flexible development procedure, open space calculations, environmental impact assessment, renewable energy, and historic preservation. There was a discussion on the number of priority items. Mr. Hatton noted that the EAC was in support of renewable energy. The PC members finalized the suggested list.

Old Business

1. Ordinance Amendments – Off-Street Parking

Ms. Carter explained that the Planning Commission has already recommended approval of the proposed draft, which was sent to the Chester County Planning Commission for review. Mr. Hatton asked whether the PC had sufficient time to discuss the review letter considering the upcoming hearing date. Ms. Carter explained that the PC and the Board have already extensively reviewed the draft in consultation with the Township traffic consultant and the solicitor. She believed that the main takeaway from the County's review is an expressed support for reduction of parking requirements. Ms. Carter further noted that the County's comment about the parking increase for new shopping centers is addressed by proposed reserve parking requirements. She asked the members' feedback whether these recommendations should be considered. Mr. Hatton wondered whether the comment about maintenance responsibilities for shared parking should be incorporated. Mr. Flynn suggested to postpone the discussion until the next meeting after the Commission had a chance to review it. Mr. Embick suggested an alternative to pass these recommendations to the Board for consideration. Mr. Flynn also suggested for the members to provide comments, if any, to Ms. Carter. The Planning Commission agreed.

2. Priorities for 2024 and Joint Meeting Preparation

Mr. Embick noted that the annual report and priority items as discussed and agreed on by the Commission would be presented to the Board. Mr. Embick suggested to Ms. Carter that if the Board would like to propose priorities for the Commission's considerations, these suggestions would be welcomed.

Reports

1. Mr. Hatton made the EAC report from the January 23 meeting.
2. Mr. Lees made the BOS report from the February 5 meeting.

Adjournment (RH/JL) 6-0

The meeting was adjourned at 8:46 PM.

Respectfully submitted,
Mila Carter
Planning Commission Secretary



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February 7, 2024

Board of Supervisors
Westtown Township

RE: Planning Commission Annual Report - 2023

In accordance with Article II, section 207 of the Pennsylvania Municipalities Planning Code (MPC), the Planning Commission shall keep a full record of its business and shall annually make a written report by March 1 of each year of its activities to the governing body. The first is a brief summary of the Planning Commission efforts for the year 2023 and signatures. This is followed by a detailed listing of the events by month. The final section is a list of the items planned for 2024 as they are now expected. It is very likely that this list will be modified as the year progresses.

Summary of Completed Planning Commission Activities

For the calendar year 2023, the Planning Commission reports the following activities.

- The Commission continued to review Zoning Hearing Board (ZHB) requests for variances and/or special exceptions being requested by Township residents. This is likely a trend caused by lack of affordable housing, high interest rates, an aging population, and the desire by many to stay in their current homes. It is anticipated that this trend will weaken if interest rates are reduced and the presidential election cycle has completed.
 1. 330 Sissinghurst Drive for a variance to retain the maximum impervious coverage which was exceeded by the unpermitted construction of pool and decks. The Commission did not have a quorum to make recommendation on the application.
 2. 819 Oakbourne Road for a variance to retain two dwelling units and special exception to continue operating the third-party landscaping business. The Commission recommended approval for a second dwelling unit with a condition that the lease to the third-party landscaping business shall terminate with 90 days of the Zoning Hearing Board approval, and that the Zoning Hearing Board consider whether or not the relief should be made personal to the applicants.

3. 1502 West Chester Pike for Chase Bank for a series of variances including the number of parking spaces, location of parking and trash enclosure and width of the driveway aisle for future placement of Chase bank. The Commission did not have a quorum to make recommendation on the application.
 4. 811 E Sage Road for a variance to retain the 8-foot high fence to keep deer away. The Commission recommended denial of the variance request.
 5. 901 S New Street for a variance to construct a garage within the minimum setback area of side yard. The Commission chose not to provide any recommendations.
 6. 1115 Butternut Road for a variance to construct garage within the front building yard setback.
 7. Crebilly Lot #4 for special exception to use the existing barn as an accessory dwelling unit and associated variances. The Commission recommended approval of special exception and variance requests as presented.
 8. 1131 S Chester Road for special exception for a major home occupation on the intersection of two major arterials. The Commission recommended approval of the application to utilize the lower level of the existing house for a sole practitioner's medical office.
 9. 1001 S Walnut Street for special exception for major home occupation for a deck construction business.
- Other than the proposed Stokes Estate subdivision and land development to construct more than 80 single-family homes on 80+ acres of land, which at this time has been denied by the Board of Supervisors, there has been few requests for Conditional Use review. Many of the requests have come from Westtown School, which has initiated a number of projects in the last few years.
 1. Sketch Plans:
 - A 1-story 3,294 SF Chase Bank at Westtown Marketplace shopping center. The land development application is pending upon the amendments to the parking ordinance.
 - A 1-story 9,550 SF warehouse/distribution facility at the former Abbey Green property.
 2. Land Development Plans:
 - Improvements to the Center for the Living Arts at Westtown School. The Commission recommended approval with conditions.
 - Improvements to athletic fields and construction of a support building at Westtown School. The Commission recommended approval with conditions.
 3. Conditional Use

- A 2,750 SF Visual Arts Center (VAC) at 1632 West Chester Pike. The review of the application is extended until the end of March 2024.
 - Athletic field lighting for one field at Westtown School. The Commission recommended approval with conditions.
 - A 10-acre solar panel facility at Westtown School. The Commission recommended approval with conditions.
 - Stokes Estate development of 85 single family homes on 81 acres of land under flexible development procedure with an access from Shiloh Road. The Commission recommended denial. The Board has denied the application.
- The Commission has once again returned to review and update of the planning code ordinances.
 1. Amendments to Chapter 170, Zoning, Article XVII, Off Street Parking and Loading,
 2. Amendments to Chapter 170 Zoning to permit managed meadows.
 3. Amendments to Chapter 63, Outdoor Burning.
- The Commission experienced several changes to appointments:
 1. The Commission welcomed two new members this year: Brian Knaub and Joe Frisco.
 2. A long time Westtown employee and member of the Commission, Elaine Adler, has retired after many years of service.
 3. Russ Hatton appointed as a PC representative for the Environmental Advisory Council

Westtown Township Planning Commission



Russ Hatton – Chairman (2023)




Jack Embick – Vice-Chairman (2023)



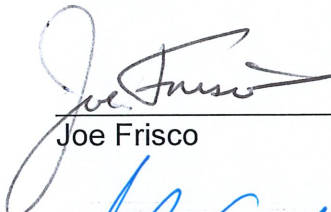
Jim Lees

Tom Sennett

Kevin Flynn



Brian Knaub



Joe Frisco



Liudmila Carter - Secretary

Year in Detail

January 2023

- Vice-Chairman Mr. Embick nominated Mr. Hatton, seconded by Mr. Lees, for Commission Chairman. All in favor. Nomination for Commission Vice-Chairman Mr. Sennett nominated Mr. Embick, seconded by Mr. Hatton. All voted in favor.
- Westtown School Land Development Plan – Center for the Living Arts The applicant's representative, Gina Gerber, Esq., introduced the scope of the project.
- #2023-02 330 Sissinghurst Drive The applicant and homeowner, Matt Fanfera, presented a summary of the application and a description of the improvements that have already been installed on his property. He noted that if allowed to retain all the improvements, he would need to install a stormwater management facility. Mr. Sennett asked for clarification on the improvements that were already installed.

February 2023

- ZHB Application – 819 Oakbourne Road. Brendan Burke appeared on behalf of the applicants Hank and Harrison Whalen regarding a use variance for 819 Oakbourne Road, which is in the R-2 Zoning District. The Whalens purchased the property several years ago, and rent out space to a landscaping company. In addition, the property is home to two apartment units, in which Hank lives in one unit and his son Harrison lives in the other. As a result, former Zoning Officer Maggie Dobbs had sent the Whalens a letter dated June 10, 2022 highlighting zoning violations for commercial operations and an excessive number of residential dwellings on the property. Mr. Burke explained that the previous owners had run a nursery business from that location dating back to the early 1980s, when the garage and the two apartment units were constructed, although there is some ambiguity about when the second residential unit was built.
- Zoning Ordinance Update – Managed Meadow Ms. Carter raised concerns that the draft Managed Meadow ordinance lacked specificity. The Planning Commission was agreeable to her revising the draft ordinance, in her new capacity as Director of Planning and Zoning for discussion at a future Planning Commission meeting.
- A Letter of Support for Chester County Municipal Grant Program, Mr. Embick made a motion to authorize the Chair to sign the letter of support for the Chester County Municipal Grant Program for funding to acquire Crebilly Farm.
- Liudmila Carter, Assistant Township Manager and Director of Planning and Zoning, appointed as Secretary to the Planning Commission. (JE/JL) 4-0 Mr. Embick made a motion to appoint Liudmila Carter, All in favor.
- Conditional Use Application – 1632 Associates LLC for Visual Arts Center Mr. Hatton acknowledged that the PC has received additional materials right before the PC meeting with no time for review to be able to render recommendations on the

application at that meeting. He reiterated that all materials are due the Thursday before the PC meeting for the PC to have enough time to review.

March 2023

- ZHB Application – 819 Oakbourne Road continued. Mr. Embick made a motion to recommend that the Zoning Hearing Board approve the variance application for a second dwelling unit with a condition that the lease to the third party landscaping business shall terminate with 90 days of the Zoning Hearing Board approval, and that the Zoning Hearing Board consider whether the relief should be made personal to the applicants.
- ZHB Application – 1502 West Chester Pike for Chase Bank. Mr. Gregg Adelman represented the applicant, Westtown AM West TIC, LLC, which is affiliated with Paramount Realty that purchased an 18.45-acre property at 1502 West Chester Pike. He explained that the company completed an assessment of the property and concluded that additional retail space could be accommodated. He further explained that the applicant proposes to install a 3,294-sf drive-in bank on the northeastern portion of the existing parking lot of the property. He recapped that the applicant is seeking a series of dimensional variances to accommodate the placement of the future bank, to permit a trash enclosure to be located within the side yard, to permit 18-foot-long parking spaces where a minimum of 20-foot-long spaces are required, to permit 518 total parking spaces where 705 spaces are required, to permit the two-way parking lot drive aisle to be 24-feet wide where a minimum of 28 feet wide is required.
- Appoint a Planning Commission member, as a representative for the Environmental Advisory Council. Jack Embick made a motion to appoint Russ Hatton as a Planning Commission representative for the Environmental Advisory Council.
- ZHB Application – 330 Sissinghurst Drive continued. The applicant and homeowner, Matthew Fanfera, summarized the revised plans and narrative provided to the Planning Commission. He recapped that the property survey and stormwater management plan were completed by the engineer demonstrating the proposed infiltration bed to be appropriately sized to mitigate any negative impacts on the environment from completed and pending construction. Mr. Fanfera further explained that the stormwater management report and infiltration testing will be completed upon approval of the application.
- Stormwater, Zoning, and SALDO Proposed Changes List Ms. Carter explained that the list of ordinance updates that was developed in 2019 needs to be revisited to update the status of those completed and to add any potential items that the Planning Commission might have. Mr. Hatton recommended to consider adding beekeeping regulations and the use of gasoline powered leaf blowers. Ms. Carter pointed out that there is an interest in beekeeping in the Township and setting up a specific to beekeeping permit process will be appropriate. Mr. Federico recommended for the Planning Commission to consider revisiting the traffic study requirements within the subdivision and land development ordinance and regulations pertaining to shared parking.

- Supervisor Pomerantz made a motion to appoint Russ Hatton as the Planning Commission representative to the EAC for a three-year term ending December 31, 2025
- Supervisor Pomerantz made a motion to appoint Brian Knaub to the Planning Commission for an unexpired term ending December 31, 2025. Mr. Yaw seconded. There was no public discussion, and the motion passed 3-0.

April 2023

- Ms. Carter announced that Conditional Use Hearing for Westtown School Athletic Field Lighting has been scheduled for Tuesday, May 9, 2023 at 7pm. She noted that meeting location is TBD. Mr. Embick requested Ms. Carter to prepare draft conditions that might be appropriate.
- ZHB Application – 811 E Sage Road. Raman Patel, co-owner, and resident of 811 E Sage Road, provided a handout to the Planning Commission on the neurological condition he must raise awareness and offer context for a variance request. He explained that he was seeking a relief with the Zoning Hearing Board to allow the existing 8-foot heavy duty poly-fencing with a barbed wire at the top to remain on his property for three main reasons: to reduce the damage to his property, to protect his garden areas, and to reduce the risk of contracting a tick-borne illness, such as Lyme disease.
- Conditional Use Application – Westtown School Athletic Field Lighting. Gina Gerber, an attorney with Riley Riper Hollin & Colagreco, representative for the applicant, summarized the application for the installation of permanent outdoor lighting at one athletic field on Westtown School campus. She highlighted that this application differs from what the Planning Commission (PC) has previously reviewed [2018 submission] in that the applicant intends to follow the existing zoning ordinance.
- Mr. Embick made a motion for the Planning Commission to recommend that the Board of Supervisors approve the conditional use application of the Westtown School to install permanent exterior lighting for one new turf field pursuant to Section 170-1514.D(5) of the Zoning Ordinance. There was no public comment. All in favor.
- Ordinance Amendments – Parking Regulations Al Federico provided examples of various parking regulations and discussed challenges when trying to determine the appropriate number of parking spaces for various uses within the shopping center. He suggested for the Township to determine the intent of parking regulations and raised questions about the utilization of existing shopping center parking. Planning Commission discussed the potential requirements for EVs charging stations, including the placement and size and limitations on usage. Mr. Federico agreed to evaluate potential regulations and provide some samples to the Planning Commission.

May 2023

- Conditional Use Application – Westtown School Athletic Field Lighting continued. Mr. Hatton referred to the memo prepared by Ms. Carter at the request of the Planning Commission with a list of conditions recommended by the Planning Commission in 2018 in response to the previous application for permanent outdoor athletic lighting
- Ordinance Amendments – Parking Regulations Al Federico provided examples of various parking regulations and discussed challenges when trying to determine the appropriate number of parking spaces for various uses within the shopping center
- The Planning Commission recommended that the Board of Supervisors approve the conditional use application of the Westtown School to install permanent exterior lighting for one new turf field pursuant to Section 170-1514.D(5)

June 2023

- Conditional Use Application – Westtown School Solar Panel Facility (BioStar Solar LLC) Louis Colagreco, legal counsel with Riley Riper Hollin & Colagreco, representative for the applicant, introduced Andrew Stancati, Senior Vice President with BioStar Solar LLC, and provided an overview of the proposal. Mr. Stancati explained the main goal of the project is to reduce the school reliance on traditional energy sources by installing onsite solar, which in his opinion aligned with the Township and West Chester Area Council of Governments (WCACOG) objectives to commit to renewable energy by 2025. Mr. Embick made a motion for the Planning Commission to recommend to the Board of Supervisors an approval of the conditional use approval for the installation of solar panel facility at Westtown School's campus.
- ZHB Application – 901 S New Street Thomas Peterson, the property owner at 901 S New Street, described his property as a 1- acre lot with an old farmhouse and storage building and a stream, a tributary of Plum Run, running through the property. He clarified that nearly the entirety of the property, including the existing storage building, is within the area designated by the Federal Emergency Management Agency (FEMA) as Zone A, which is subject to strict floodplain regulations. Mr. Peterson contemplated to replace the deteriorated storage building with a detached garage at the same location, but found it to be costly due to a required hydraulic and hydrologic study and floodproofing requirements. Therefore, he felt the better option is to demolish the existing building and construct a new 3-car garage in the only area that is outside of the designated floodplain, which would require several variances. Mr. Knaub expressed his support in recommending the approval to the ZHB. Mr. Sennett made a motion that the PC makes no recommendation on the application. Mr. Flynn seconded. Mr. Embick opposed. Motion passes
- The BOS acknowledged Elaine Adler's Resignation from the Planning Commission. Jim Lees noted that Elaine Adler had retired after many years on the Planning Commission and that her presence and input would be missed by her colleagues. Supervisor Pomerantz observed that Ms. Adler was the personification of institutional knowledge about Westtown's Zoning Ordinance and was irreplaceable.

July 2023

- Conditional Use Application – Stokes Estate Flexible Development – continuation. Gregg Adelman, representative for the applicant, explained that the pending application for the Stokes Estate flexible procedure development has been put on hold due to litigation in dealing with connection to Shiloh Hill Drive. Since then, the applicant has acquired portions of adjacent parcels and submitted a new land development plan.
- ZHB Application – 1115 Butternut Road. Howard Hinsdale, the property owner 1115 Butternut Road, summarized his proposal to build an addition to an existing two-car garage, which requires a relief from the front yard setback requirement. He initially contemplated locating a detached garage at the rear of his property, however, due to stormwater-related issues, location of on-lot sewage facility, existing easement, and potential for driveway extension, he felt that addition on the existing garage is a better solution. Mr. Embick made a motion that the PC recommend denial of the application for a variance. Mr. Hatton seconded. Motion passed.
- ZHB Application – Crebilly Lot #4 Mr. Embick announced that he would like to recuse himself from participating in the discussion due to potential conflict from working with Mr. Nagel on other unrelated matters. Brian Nagel, representative for the applicant, summarized the application for special exception and associated variance request to convert the existing barn located on the future parcel of approximately 24 acres, currently designated as Crebilly Lot #4 on the subdivision plan, to an accessory dwelling unit (ADU) of 7,200 square feet. He explained that the property has an access from S New Street, which will remain, and consists of a house, chapel, barn, and pond. Mr. Nagel described the existing barn and its future use as an ADU for visits by extended family Mr. Hatton made a motion that the PC recommend approval of the application for special exception and variances. Mr. Sennett seconded. Motion passes.
- Conditional Use Application – Stokes Estate Flexible Development continued. Gregg Adelman, representative for the applicant, summarized that nothing has changed since the previous appearance at the PC meeting except for a new speed study and revisions to sight distances at proposed road openings on Shiloh Road.

August 2023

- Conditional Use Application – Stokes Estate Flexible Development continued. Michael Gill initiated the discussion on Planning Commission's (PC) recommendations on the application to develop 85 single family residential homes. He summarized that the PC has voiced several concerns with the application which were incorporated in the draft recommendation letter to the Board of Supervisors (BOS) that called for denial based on several items or approval with a list of conditions.
- ZHB Application – 1131 S Chester Road. Charles Proctor, legal counsel on behalf of the applicant, summarized the application for major home occupation for a sole practitioner's medical office at the property located at the intersection of two arterial

streets. He described the property as an older home that has been used as a photography studio and residence since the time it was purchased by the previous property owner in 1983. Mr. Proctor explained that the previous owners applied for special exception for major home occupation which was granted by the Zoning Hearing Board at that time. Mr. Flynn made a motion to recommend approval of the ZHB application for a major home occupation for a sole practitioner's medical office at 1131 S Chester Road. Mr. Knaub seconded. All were in favor of the motion.

- Supervisor Pomerantz made a motion to appoint Joe Frisco to the Planning Commission for the unexpired term ending December 31, 2023.

September 2023

- Ms. Carter announced that the ZHB application for 1115 Butternut Road to construct a garage within the front yard setback was denied. Ms. Carter also announced that the ZHB application for Crebilly Lot #4 to convert existing barn into an accessory dwelling unit was approved with conditions. Ms. Carter further announced that the applicant for the Visual Arts Center asked for an extension of the conditional use application until the end of the year
- Conditional Use Application – Stokes Estate Flexible Development continued Mr. Embick announced that the PC intended on finalizing its recommendations and conditions on the conditional use application for the flexible residential development of the Stokes Estate, and asked Mr. Gill to summarize the changes made as discussed.

October 2023

- Ms. Carter announced that the ZHB application for 1131 S. Chester Road for special exception to allow for the sole practitioner's medical office to be located at the lower level of the dwelling. Ms. Carter reminded everyone that Conditional Use Hearing for the Stokes Estate Flexible Development is October 24, 2023 at 7pm. Ms. Carter noted that the West Goshen Planning Commission will discuss the Conditional Use application to redevelop a portion of the existing Parkway Shopping Center with a proposed convenience store and fueling stations at their October 10, 2023 meeting. Considering its proximity to Westtown, she encouraged the Planning Commission members to attend.
- Land Development Application – Westtown School. Gina Gerber, an attorney with Riley Riper Hollin & Colagreco, on behalf of the applicant provided a brief overview of the land development application to install various improvements to the athletic fields at the Westtown School.
- Ordinance Amendments - Shopping Center Parking continuation. Al Federico recapped that the Planning Commission expressed interest in reevaluating current parking requirements, and that he has previously provided an overview of parking

trends as well as several samples of shopping center parking ordinance language. In summary, he suggested changes to requirements pertaining to shared parking, shopping center parking, and parking reserve area to allow for modifications to the number of required parking spaces.

- Land Development Application – Westtown School, continued. Gina Gerber, an attorney with Riley Riper Hollin & Colagreco, on behalf of the applicant, recapped that the Township consultants have reviewed the applicant’s submission and issued review letters. Mr. Embick made a motion to recommend approval of the Preliminary and Final Land Development application for the Westtown School Oak Lane project and waivers as requested by the applicant in the October 18, 2023.
- Ordinance Amendments – Parking Regulations continued. In considering potential amendments to the Township’s parking regulations, the PC asked Al Federico to research several other requirements pertaining to parking, specifically potentially increasing the required number of parking spaces for single family and multi-family dwellings. Mr. Federico referenced the Township’s existing code requirements of 3 parking spaces for single family homes and 2 parking spaces for each dwelling unit within multi-family building. In general, the minimum requirement within the suburban areas is 2 parking spaces for single family homes, thus, Mr. Federico believed that Westtown’s requirement is sufficient.
- Ordinance Amendments - Fences continuation. Mr. Patel, 811 E. Sage Road, referred to the document he provided to the Township dated October 11, 2023 with proposed changes to the ordinance regulating fences. He noted that some recommendations might not be substantial in nature.
- Ordinance Amendments - Outdoor Burning continuation. Gerry DiNunzio, Westtown Fire Marshal, summarized his request to amend the outdoor burning requirements to provide some clarity when it comes to the use of fire pits. He explained that many outdoor burning complaints that the fire department receives relate to the use of fire pits, which are permitted.
- Ordinance Amendments – Managed Meadows continuation. Ms. Carter explained that the draft language to permit managed meadows as permitted property use has been previously presented to the PC for review, but no further discussion transpired. She wanted to see if the PC had any comments to be incorporated into the final draft and/or any concerns. Mr. Hatton added that the Township Environmental Advisory Council (EAC) recommends implementing an ordinance that supports the establishment of managed meadows.

November 2023

- Parking ordinance discussion where the BOS may require a street with a sufficient paved width to allow on-street parking on one or both sides if determined it should be necessary to meet parking requirements. Mr. Federico recommended that language be revised. He also brought up the previous discussion on parking within garages, and

noted that a typical parking space is 9 feet by 18 feet and with a garage of 20 feet by 20 feet one can potentially fit two sedans. He further explained that the ordinance requires a specific setback for residential parking from the street line to the parking area, which makes the beginning of the driveway not to be counted towards meeting the parking requirements. Mr. Federico suggested some language to mitigate that issue. Ms. Carter noted that the proposed ordinance language removes specified parking requirements for the visual art center (VAC) and that some of the use-specific parking requirements referenced in Section 170-1705 might not be reflected in the proposed shared parking table. Motion to recommend the proposed amendments to Chapter 170, Zoning, Article XVII, OffStreet Parking and Loading, to be considered for approval by the Board of Supervisors with changes as discussed by the Planning Commission. JE/TS (6-0)

- Outdoor burning continued discussion. Westtown Township Fire Marshal Gerry DiNunzio summarized his request to amend the outdoor burning requirements to provide some clarity when it comes to the use of fire pits. He explained that many outdoor burning complaints that the fire department receives relate to the use of fire pits, which are permitted. He referred to the memo prepared by Ms. Carter that summarized the potential concerns related to the use of outdoor recreational devices and provided recommendations on ordinance changes, including a requirement for no burning after a certain hour and continuous supervision. Mr. DiNunzio expressed concern that limiting burning to certain hours may be too restrictive on recreational burning.
- Sketch Plan Application – continued. Westtown Marketplace Bank Gregg Adelman, attorney with Kaplin Stewart, on behalf of the applicant, Westtown AM West TIC, LLC, presented a sketch plan for the proposed development of a Chase Bank on the property at 1502 West Chester Pike known as the Westtown Marketplace shopping center, located within the C-1 Neighborhood and Highway Commercial Zoning District. He explained that the sketch plan for a one-story 3,294 square foot drive-in bank was like the plans previously submitted under the zoning variance application, which was discussed and favorably supported by the PC. Mr. Adelman recapped that the Zoning Hearing Board (ZHB) has granted approval for several of the requested variances, but denied request to decrease the number of parking spaces.

December 2023

- Ordinance Amendments - Outdoor Burning continued. Fire Marshal Gerry DiNunzio summarized that he worked with Ms. Carter to address PC's comments on proposed language, which included editing definitions for recreational and ceremonial fire, adding definition for yard waste and applicable requirements, dimensions for the burning area, and clarification on how to contact a Fire Marshal. Mr. Flynn asked about the Chester County non-emergency 911 number. Mr. DiNunzio explained that when you call 911, it goes to the same dispatch room as calling the non-emergency number.

- Ordinance Amendments – Managed Meadow continued Mr. Hatton explained that the purpose of the managed meadow ordinance is to assist the Zoning Officer in enforcing the Property Maintenance Code without having to fine residents who have such meadows in place. He recapped that the Code requirement is to keep the grass no higher than 10 inches, however, plantings within meadows are usually taller than that. He further noted that the proposed definition was purposely not very detailed and was limited to managing the invasive plants. Ms. Carter added that from the enforcement perspective if the area in question was being maintained and there were no apparent invasive plants, it could be classified as a meadow. Motion to approve draft ordinance as amended regarding amending Chapter 170 Zoning of the Code of Westtown Township to permit managed meadows. Mr. Lees asked whether the solicitor has approved it. Ms. Carter explained that it was reviewed except for the most recent changes which would be reviewed prior to the Board meeting. Mr. Lees seconded. All were in favor of the motion. (JE/JL) 6-1
- Sketch Plan Application – 1032 and 1036 Wilmington Pike Kurt Wolter, property owner of 1032 and 1036 Wilmington Pike, explained that he purchased the properties approximately 3-4 years ago with the intent to redevelop for a tenant, who walked away. Mr. Wolter had another prospective tenant for commercial use, for which the sketch plan was prepared, but who decided not to move forward. Mr. Wolter wanted to meet with the Planning Commission to discuss any concerns pertaining to the property and referred to the sketch plan depicting a potential layout of building, parking areas, circulation, landscaping buffer and an underground stormwater management facility. Mr. Embick noted that the PC was advised there was a concern about historic significance of one of the buildings, which is included on the Westtown Township Historic Resources list. Mr. Wolter believed the building was ready to tumble down and he intended to demolish it. Stephen Wahrhaftig expressed concerns regarding the historic property. He mentioned that the Township’s records indicate that the building was built in 1795 and it was one of the oldest buildings on the Township’s inventory.
- ZHB Application – 1001 S Walnut Street Mr. Chavous, property owner of 1001 S Walnut Street, summarized his request for special exception for major home occupation to run his business, Chavous Custom Contracting, from his home. He explained that his business is currently located in Darby, but the site is not being utilized, because he and his family relocated to Westtown and he must commute. He reached out to the neighbors to collect signatures in support of his application and revised the site plan to address screening concerns raised by the PC previously. He referred to the site plan depicting a proposed 6-foot privacy fence along portion of the property where most of the business activity would occur. Motion to recommend approval of the ZHB application for special exception to permit major home occupation for a deck building business with the following conditions to be considered by the ZHB:
 1. All commercial vehicles shall be parked in the garage, except for one commercial vehicle which is permitted to be parked outside.
 2. Loading and unloading of materials shall only occur between 7am and 7pm, Monday through Saturday.
 3. Privacy fence

for screening purposes within the front yard, as appropriate, shall be installed prior to start of business operation. JE/KF (6-0

- Ordinance Amendments – 2024 Priorities Mr. Hatton recapped that the PC has been keeping a list of potential ordinance amendments with some going back to 2001. Mr. Flynn proposed to create a separate category for the items that had been discussed but not adopted. Mr. Embick suggested not to separate the list because these items might come up in the future, and instead assign a low priority and make a note under status column to keep track. The PC went through the list of high priority items.

Plans for 2024

The following items have been identified by the PC as priority initiatives for the next year. It is expected that this list will expand or will be modified as the year progresses. The high priority items are the first six line items:

- Review flexible development ordinance for setbacks, lot size, and open space requirements.
- Consider revisions to open space calculations.
- Review proposed changes to the historic preservation ordinance.
- Revise conservation design regulations and consider potential amendments.
- Review 2019 Comprehensive Plan for items that could be revised and/or implemented.
- Consider adoption of the environmental impact assessment provisions.
- Review the renewable energy systems provisions for potential changes to setbacks for ground mounted systems and any other requirements if deemed needed.
- Finalize fencing regulation updates, including placement, type, materials and heights.
- Revise road construction references to outdated PennDOT regulations.
- Improve requirements and process in the use of sketch plans.
- Complete revisions to storage regulations to include self-storage and other storage methods.
- Discuss opportunities for development of trail connections to parks and open spaces.
- Consider revisions to assessment criteria (i.e., traffic impacts).

THE PLANNING COMMISSION IN PENNSYLVANIA

PLANNING SERIES #2

Twelfth Edition | September 2017



Shrewsbury, PA



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Preparation of this publication was financed from appropriations of the General Assembly of the Commonwealth of Pennsylvania. Technical Assistance from Michael Baker Jr., Inc. and The Law Firm of Susan J. Smith was used in the preparation of this publication.

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Table of Contents

I.	The Planning Commission	1
	Preface	1
II.	Introduction	2
III.	Statutory Authority for Planning	3
IV.	Examples of Specific Planning Commission Responsibilities	5
	The Planning Commission and Subdivision and Land Development Review	5
	The Planning Commission and Stormwater Management Planning	5
	The Planning Commission and Floodplain Management	5
	The Planning Commission and Sewage Facilities Planning	6
	The Planning Commission and Public Meetings	7
	The Planning Commission and Multimunicipal Relationships	7
V.	The Planning Commission and Building Code Enforcement	9
VI.	Membership, Appointment, and Organization	10
VII.	General Operating Procedures for Planning Commissions	12
VIII.	Planning Commission’s Relationship to the Governing and Appointed Bodies	13
IX.	Planning Commission Reports to the Governing Body	14
X.	Planning Commissions and the need for Technical Planning Services	15
	A Note About Studies	16
XI.	Issues Every Planning Commission Member Should Consider	17
	Approaching the Art of Planning: Reactive vs. Proactive	17
	Ethics	18
	Planning Ethics	19
XII.	Planning Assistance from DCED	20
XIII.	Other Planning Assistance	21
XIV.	Conclusion	22
	Appendix I. Additional Readings and Resources for Planning Commissioners	23
	Appendix II. Model Ordinance for Creating a Planning Commssion	24
	Appendix III. Suggested Bylaws for Planning Commissioners	27

I. The Planning Commission in Pennsylvania

Preface

The *Planning Commission in Pennsylvania (Planning Series Publication #2)* is one of a series of 10 planning publications produced by the Governor's Center for Local Government Services (Center) as a means to educate both professionals and non-professionals on the ways that planning and land use management is achieved within the commonwealth. The planning publications were first developed in the 1970s and in subsequent editions have been revised to incorporate differences in the overall planning viewpoint, offer up-to-date best practices, and reflect the latest changes in Pennsylvania planning law. Each publication addresses a specific planning or land use method enabled through The Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as reenacted and amended, 53 P.S. § 10101, et seq., and used by municipalities throughout the commonwealth.

The Center's 10 Planning Series Publications are as follows:

- No. 1 – Local Land Use Controls in Pennsylvania
- **No. 2 – The Planning Commission**
- No. 3 – The Comprehensive Plan
- No. 4 – Zoning
- No. 5 – Technical Information on Floodplain Management
- No. 6 – The Zoning Hearing Board
- No. 7 – Special Exceptions, Conditional Uses and Variances
- No. 8 – Subdivision and Land Development in Pennsylvania
- No. 9 – The Zoning Officer
- No. 10 – Reducing Land Use Barriers to Affordable Housing

This publication specifically addresses the planning commission form of a planning agency authorized by the MPC. To that end, this publication is designed and intended for the following purposes:

- To address the statutory authority and composition of the planning commission in Pennsylvania and the specific powers and duties of the planning commission;
- To specify the reasons for and roles of the planning commission in municipal land use decisions;
- To guide municipal planning commission members on their specific roles and responsibilities as authorized by the MPC and as may be further stipulated in a planning commission's bylaws, rules, and regulations governing its procedures consistent with the ordinances of the municipality and the laws of the commonwealth;
- To review the common roles of planning commission members, particularly in terms of hiring planning consultants to assist with various technical planning activities; and
- To provide supporting technical guidance through a series of appendices that include a model ordinance and procedures for the establishment of a planning commission, model bylaws, and the adoption of a community's comprehensive plan.

II. Introduction

Communities throughout the commonwealth are faced with many challenges that require the insight, intuitiveness and energy of its local residents, some of whom are appointed by their governing body to serve on their municipal planning commission. These “citizen planners” are tasked with developing plans and implementation policies that provide the foundation for the community to manage changes caused by a variety of internal and external forces including community growth or decline, and changes in demographics, economies, technology, natural resources, the environment, housing, transportation, etc.

As its name implies, a planning commission’s primary activity is planning, which according to the American Planning Association, “is a dynamic discipline that works to improve the welfare of people and their communities by creating more convenient, equitable, healthful, efficient, and attractive places for present and future generations. Planning enables civic leaders, businesses, and citizens to play a meaningful role in creating communities that enrich people's lives. Good planning helps create communities that offer better choices for where and how people live. Planning helps communities to envision their future. It helps them find the right balance of new development and essential services, environmental protection, and innovative change.”¹

In Pennsylvania, planning commissions are primarily responsible for and charged with exercising a municipality’s legal right to develop a comprehensive plan that outlines its specific community planning objectives that may focus on environmental protection; agricultural, historical, and cultural resource preservation; business retention, expansion, and recruitment; urban redevelopment; housing opportunities; parks and recreation amenities; transportation and utility infrastructure; or other health, safety, and public welfare needs and issues that are critical to community’s overall well-being and prosperity.

As such, planning commissions are on the front line regarding the issues that matter most to many communities. Their leadership is crucial in developing recommendations for implementing change as well as promoting responsible and sustainable community planning practices that have not only local implications, but multimunicipal and regional implications as well.

The most recent data available tell us that more than 60 percent of the municipalities in the commonwealth have planning commissions. In fact, there are more municipal planning commissions than water and sewer authorities or police departments in the commonwealth.

References

1. *What is Planning?* American Planning Association. Retrieved April 9, 2014 from <https://www.planning.org/aboutplanning/whatisplanning.htm>

III. Statutory Authority for Planning

The responsibility for planning in Pennsylvania has been delegated to each local municipality and county. The Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as reenacted and amended, 53 P.S. § 10101, et seq., is the legislation that conveys planning authority and sets the ground rules that a municipality must follow.

Specifically, Article II, Section 201 of the MPC provides the municipal governing body with the legal authority to establish, by ordinance, a planning agency. A governing body has several choices when it decides to create a planning agency within its municipality. It can create a planning commission, planning department or both; or, instead of a commission or department, the governing body may create a planning committee composed solely of members of the governing body. Since many municipalities opt to establish a planning commission, this publication specifically addresses the planning commission form of organization.

In Pennsylvania, the Municipalities Planning Code is the uniform planning and land use enabling law for all municipalities and counties, including those under home rule, but not for the cities of Philadelphia (consolidated with Philadelphia County) and Pittsburgh.¹

The MPC requires that the planning commission be created by ordinance enacted by the governing body and requires that it be abolished in the same manner. A model ordinance for the creation of a planning commission can be found in Appendix II: Model Ordinance for Creating a Planning Commission.

A planning commission acts as an advisor to the governing body. Its principal role is stipulated in Section 209.1 of the MPC: A planning commission is required – at the request of the governing body – to prepare a comprehensive plan for the long-term growth, development, and well-being of the municipality. (For more information on comprehensive plans, please see *Planning Series #3 The Comprehensive Plan in Pennsylvania*.) Under Section 209.1 of the MPC, a planning commission is also empowered to:

1. Make recommendations to the governing body concerning the adoption or amendment of an official map.
2. Prepare and present to the governing body a zoning ordinance, and make recommendations to the governing body on proposed amendments to it.
3. Prepare, recommend, and administer subdivision and land development and planned residential development regulations.
4. Prepare and present to the governing body a building code and a housing code and make recommendations concerning proposed amendments thereto. *Refer to The Planning Commission and Building Code Enforcement section below.*
5. Do such other acts or make studies as may be necessary to fulfill the duties and obligations imposed by the MPC.
6. Prepare and present to the governing body an environmental study.
7. Submit to the governing body a recommended capital improvements program.
8. Prepare and present to the governing body a water survey, which shall be consistent with the State Water Plan and any applicable water resources plan adopted by a river basin commission. The water survey shall be conducted in consultation with any public water supplier in the area to be surveyed.
9. Promote public interest in, and understanding of, the comprehensive plan and planning.
10. Make recommendations to governmental, civic, and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals.
11. Hold public hearings and meetings.
12. Present testimony before any board.
13. Require from other departments and agencies of the municipality such available information as relates to the work of the planning agency.
14. In the performance of its functions, enter upon any land to make examination and land surveys with the consent of the owner.

15. Prepare and present to the governing body a study regarding the feasibility and practicability of using renewable energy sources in specific areas within the municipality.
16. Review the zoning ordinance, subdivision and land development ordinance, official map, provisions for planned residential development, and such other ordinances and regulations governing the development of land no less frequently than it reviews the comprehensive plan.

In addition to the duties and responsibilities authorized by Section 209.1 of the MPC, a governing body may by ordinance delegate approval authority to a planning commission for subdivision and land development applications. Generally, larger municipalities or counties delegate this approval authority to a planning commission or department and many such municipalities and counties are large enough to have full-time professional staff.

Also, in instances in which a municipality has enacted an impact fee ordinance pursuant to Article V-A of the MPC, the planning commission may also be appointed by the governing body as the impact fee advisory committee. However, such an appointment requires the planning commission's membership to include no less than 40% representation from the real estate, commercial and residential development, and building industries. Individuals representing these industries must reside in the municipality or conduct business within the municipality to serve as *ad hoc* voting members of the planning commission whenever the planning commission functions in this capacity.

Administrative and technical services provided by outside entities (both public and private) may be employed by the governing body to carry out any of these duties and responsibilities. Also, the planning commission can accept and utilize funds, personnel, and other services made available to it with the consent of the governing body. Such resources may be obtained through public and private grants, staffing assistance from county or regional planning agencies, or from professional consultants. The governing body can enter into agreements or contracts for the acceptance and utilization of any such funds or assistance.

The MPC gives specific authorization for municipal governing bodies to engage in intergovernmental cooperation and collaborative planning initiatives. Specifically these authorized powers can be utilized to enact planning implementation agreements. Such agreements must be made in conformance with the requirements of the Intergovernmental Cooperation Act of 1996, 53 Pa. C. S. § 2301, et seq.

In light of the MPC powers bestowed to a planning commission, the planning commission's fundamental role is to proactively exercise its authority to develop a comprehensive plan that identifies specific strategies through which the municipality can achieve its community development goals and objectives. As such, planning commissioners are on the front line regarding the issues that matter most to many communities, and they play a vital role in ensuring that all fundamental aspects of the community's growth and development are considered and coordinated. Their leadership is crucial in developing sound policy recommendations for implementing positive change to help their communities to prosper and increase the health, safety, and welfare of their fellow residents.

Through an effective comprehensive planning and implementation process, planning commissions play a crucial role in identifying, analyzing, and balancing environmental, economic, and human resources and interests. All of these resources are important to the welfare of our communities, and in combination these interests represent the very fiber of our democratic process and our quality of life. Through careful planning and implementation, planning commissions can assist their governing bodies with determining how to best balance the guaranteed property rights of land owners with those of the general public.

Appendix I: Additional Readings and Resources for Planning Commissioners provide a few resources to help members of a planning commission with their "on-the-job" training.

References

1. Article XV, Section 1 of the Pennsylvania Constitution of 1874, the First Class City Home Rule Act, Act of April 21, 1949, as amended by the Act of June 1, 1995, 53 P.S. §§ 13101 et seq., and the home rule charter adopted under those enabling authorities are the source of authority for Philadelphia's municipal planning and land use regulation. The Second Class City Zoning Law, Act of March 31, 1927, 53 §§ 25051 et seq., the Home Rule Charter and Optional Plans Law, and the home rule charter adopted under those enabling authorities is the source of authority for Pittsburgh's municipal planning and land use regulation.

IV. Examples of Specific Planning Commission Responsibilities

In support of the its fundamental comprehensive planning role, the planning commission is tasked with carrying out a number of supporting technical responsibilities as specified under Section 209.1 of the MPC, as well as other Pennsylvania planning legislation such as The Pennsylvania Sewage Facilities Act, Act 537 of 1965, 35 P.S. § 750.1, et seq. (Act 537), and Pennsylvania’s Storm Water Management Act, Act 167 of 1978, 32 P.S. § 680.1, et seq. The following provides a summary of these technical responsibilities. Additional information on these topics is provided within Appendix I: Additional Readings and Resources for Planning Commissioners.

The Planning Commission and Subdivision and Land Development Review

While providing the leadership for planning and land use decisions is the first priority of the planning commission, in practice the planning commission's time is largely devoted to reviewing applications submitted pursuant to the municipality’s zoning and subdivision and land development ordinances and providing recommendations for their approval to the governing body. This technical function of the planning commission can consume so much of the planning commission’s time and attention that other responsibilities – such as updating the comprehensive plan– get neglected. While the review of subdivision and land development plans is important, members should also promote implementation of other aspects of the comprehensive plan and give attention to the future well-being of the community.

For further information on the technical process of reviewing subdivision and land development plans please see *Planning Series #8: Subdivision and Land Development in Pennsylvania*.

The Planning Commission and Stormwater Management Planning

Act 167, Pennsylvania’s Storm Water Management Act, was enacted in response to the impacts of accelerated stormwater runoff associated with land development in the state. Act 167 requires counties to prepare and adopt watershed-based stormwater management plans. Once the County 167 plan is approved by the Pennsylvania Department of Environmental Protection and adopted by the municipality, Act 167 requires municipalities within the area covered by the Act 167 plan to adopt and implement ordinances to regulate development consistent with the plan. Since stormwater management pertains to land development, many municipalities have chosen to enact stormwater management plan requirements through their subdivision and land development ordinance regulations or through a special purpose stormwater management ordinance. As such, the planning commission is often tasked with developing the stormwater management regulations that are typically incorporated into a county or municipal subdivision and land development ordinance, wherein the required stormwater management plan for the development project is reviewed and approved concurrently with the associated land development plan submission and approval process as discussed in *Planning Series #8: Subdivision and Land Development in Pennsylvania*.

The Planning Commission and Floodplain Management

According to the Federal Emergency Management Agency (FEMA), “floodplain management is the operation of a community program of corrective and preventative measures for reducing flood damage. These measures take a variety of forms and generally include requirements for zoning, subdivision or building, and special-purpose floodplain ordinances.”¹ Any community wishing to make flood insurance available to its property owners must agree to adopt and enforce a floodplain management ordinance consistent with National Flood Insurance Program (NFIP) policies and standards (which includes, among other authorizing legislation, the Flood Disaster Protection Act of 1973, as amended, Public Law 93-234, approved December 31, 1973) and Pennsylvania’s Flood Plain Management Act, Act 166 of 1978, 32 § P.S. 679.1091, et seq. Currently, 2,466 of Pennsylvania’s municipalities participate in the NFIP program.

Considering the planning commission’s lead role with preparing and presenting to the governing body the municipal comprehensive plan, zoning ordinance, and subdivision and land development ordinance, its responsibilities related to floodplain management are quite extensive. Although a more detailed discussion on floodplain management is provided in the *Planning Series #5: Technical Information on Floodplain Management*, the following discussion provides a summary of the MPC’s provisions related to floodplain management.

Planning – Comprehensive Plan

The planning for floodplain management begins with the comprehensive plan. Section 301(a) (2) of the MPC specifies that a plan for land use may include provisions for floodplains and other areas of special hazards and other similar uses.

Section 301(a) (4) of the MPC allows municipalities to plan for community facilities and utilities, which may include storm drainage and floodplain management.

Section 301(a) (6) of the MPC authorizes a plan for the protection of natural and historic resources to the extent not preempted by federal or state law. This clause includes, but is not limited to, wetlands and aquifer recharge zones and floodplains.

Preservation of Floodplain Areas – Official Map

Article IV of the MPC authorizes the governing body to adopt an official map of all or a portion of the municipality which may show appropriate elements or portions of elements of the comprehensive plan adopted pursuant to Section 302 of the MPC with regard to public lands and facilities, and which may include, among other features, flood control basins, floodways and flood plains, storm water management areas, and drainage easements. An official map's essential purpose is to preserve and provide for land and facilities for future public acquisition or dedication as envisioned through the municipality's comprehensive plan. More information regarding the official map and its use is discussed in *Planning Series #1: Local Land Use Controls in Pennsylvania*.

Floodplain Regulation – Subdivision and Land Development

Section 503 of the MPC specifies that the contents of a subdivision and land development ordinance may contain provisions for insuring that, among other requirements, land which is subject to flooding either shall (i) be made safe for the purpose for which such land is proposed to be used or (ii) shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing menace.

Floodplain Regulation – Zoning

Section 604 of the MPC specifies that the provisions of zoning ordinances shall be designed to promote, protect and facilitate among other aspects public health and safety that includes the preservation of floodplains.

Section 605 of the MPC specifies that in any municipality, other than a county, which enacts a zoning ordinance, no part of such municipality shall be left unzoned and use classifications may be made within any district such as floodplains and other places having a special character or use affecting and affected by their surroundings.

The Planning Commission and Sewage Facilities Planning

The Pennsylvania Sewage Facilities Act, Act 537 of 1965, 35 P.S. § 750.1, et seq. (Act 537) requires that a planning commission review the municipality's proposed official sewage facilities plan. The purpose of the planning commission's review of the municipality's official sewage facilities plan is to ensure that sewage facilities planning is consistent with comprehensive planning for the municipality 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 developed under the MPC. 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 facilities plans consider and are consistent with the municipal comprehensive plan, land use planning, and zoning. The planning commission's review and comment on sewage facilities plans plays an important part in assuring this consistency. When sewage facility planning and land use planning efforts are consistent, adequate sewage facilities can be implemented to serve both existing development needs and provide for planned growth.

Sewage facilities regulations were expanded to address natural resource and environmental protection issues, such as protection of wetlands, rare, endangered or threatened species, prime agricultural land, archaeological or historical preservation, and water resources planning. Planning commissions study these matters when undertaking the

comprehensive planning process prescribed by the MPC. Pennsylvania's Department of Environmental Protection (DEP) wants to hear the views of the planning commission regarding the proposed sewage facilities and consistency of those facilities with the goals and objectives of plans developed under MPC guidelines, including local land use ordinances comprehensive plans.

Act 537 also requires the governing body to consider the comments of the planning commission prior to adoption of a planning module as a revision to a municipality's official sewage facilities plan and subsequent submittal to DEP. If inconsistencies with the comprehensive plan, land use planning, or zoning have been identified by the planning commission, the governing body may refuse to accept the planning module as complete until these inconsistencies are resolved.

The Planning Commission and Public Meetings

The MPC provides that, at the request of the governing body, a planning commission may present testimony before any board. This would include testimony before a zoning hearing board conducting a public hearing when considering a request for a variance or special exception or a governing body conducting a hearing on a conditional use application. Section 603(c)(2) of the MPC requires that a planning commission, when considering conditional use applications, make recommendations based on express standards and criteria for the conditional use as provided for in the zoning ordinance. A planning commission should never miss the opportunity to review and comment on these matters when it has relevant information to contribute.

The Planning Commission and Multimunicipal Relationships

Although each community is unique in its physical and social composition, community planning needs and issues often transcends municipal boundaries. Therefore, it makes logical sense for planning commissions to forge multimunicipal relationships with their neighboring counterparts to discuss common issues and identify solutions that benefit the region as a whole.

Planning commission (and municipal officials in general) can approach matters on a regional basis two different ways: informally or formally. Informal arrangements can be made at any time to address almost any issue. Formal cooperative arrangements can be made by intergovernmental agreements that are more permanent and binding. Examples of these are as follows:

- **Informal – Peer-to-Peer Planning Commission Meetings/Work Sessions** – Planning commissions from neighboring municipalities, within a region, etc., may meet on an ad-hoc basis to discuss issues of concern and use the discussions to make informed policy recommendations or decisions. In such instances, the planning commission members must be cognizant of the Sunshine Act and hold their meeting accordingly.

An example of a formal partnership for a multimunicipal comprehensive plan is the Pottstown Metropolitan Regional Planning Committee (PMRPC), which is comprised of two representatives from each of the eight participating municipalities in the region. The PMRPC members address multi-municipal issues such as agricultural and open space preservation, natural and historic resources, transportation, housing, economic development, administration, and interpretation of the Pottstown Metropolitan Regional Comprehensive Plan on matters relating to zoning, land use, and public infrastructure and services. More information regarding the PMRPC is available at <http://pmrpc.pottstownmetroregion.com/about/regional-planning-committee>.

- **Formal – Statutory Consultations** – The MPC requires municipalities to consult with each other when undertaking certain actions:
 - Section 301(a)(5) requires a comprehensive plan to include a statement addressing compatibility with existing and proposed development in neighboring municipalities, plus consistency with the county comprehensive plan.

- Section 408(c) requires a municipality to forward a proposed official map ordinance or amendment to the adjacent municipality where it proposes reservations for future streets or public lands leading into the adjacent municipality.
- The MPC requires a municipality to forward proposed ordinances or amendments for subdivision and land development, zoning, and official map to the county planning agency for review and comment prior to enactment.
- **Formal – Joint, Multimunicipal, or Regional Planning Commissions** – Two or more municipalities may join together to form a planning commission covering and serving their entire area. Authority for this is provided by the Pennsylvania Intergovernmental Cooperation Law. A joint planning commission must be formed by intergovernmental agreement enacted by ordinance. The agreement must specify the structure of the joint commission, the powers delegated to it, and how it will be financed. A joint commission may exist in lieu of or in addition to individual municipal planning commissions. A county may participate in a joint planning commission. (Pennsylvania also has a lesser-known Regional Planning Law – 53 P.S. §§ 2341-2348 – that provides authority for creation of a regional planning commission by two or more municipalities.) Municipalities should obtain legal guidance from their solicitors when considering formation of a joint or regional planning commission.
- **Formal – Multimunicipal Comprehensive Plan** – Article XI of the MPC authorizes municipalities (including counties) to enter into intergovernmental cooperative agreements for the purpose of developing, adopting, and implementing a multimunicipal comprehensive plan. An agreement must establish a process to ensure each municipality acts cooperatively and consistent with the plan in implementing it. Implementation agreements can accomplish this by creating multimunicipal planning commissions as previously described, or by creating processes whereby municipalities consult with each other prior to taking certain actions implementing the plan. (For more information on multimunicipal comprehensive plans please see *Planning Series #3 The Comprehensive Plan in Pennsylvania*.)
- **Formal – Joint Municipal Zoning Ordinance** – Article VIII-A of the MPC authorizes two or more municipalities to enact a single joint municipal zoning ordinance covering all the participating municipalities. (For more information please see *Planning Series #4 Zoning*.)
- **Formal – Intergovernmental Cooperation Agreements** – Because of the broad scope of the Pennsylvania Intergovernmental Cooperation Law, two or more municipalities can work cooperatively by agreement on a variety of things such as hiring professional planning staff (where municipalities can't afford staff on their own), creating a web portal for development and zoning permits, engaging the county planning agency to perform technical reviews of development plans for the municipality, and other creative possibilities.

References

1. *Floodplain Management*. FEMA. Retrieved April 14, 2014 from <http://www.fema.gov/floodplain-management#1>

V. The Planning Commission and Building Code Enforcement

Although one of the planning commission's specific duties under Section 209 of the MPC is to "prepare and present to the governing body of the municipality a building code and a housing code and make recommendations concerning proposed amendments thereto," the Pennsylvania Construction Code Act, Act 45 of 1999, 35 P.S. §§7210.101- 7210.1103, established the Uniform Construction Code (UCC) for the entire commonwealth. Its enforcement by the Pennsylvania Department of Labor and Industry commenced in April 2004. This new comprehensive building code established minimum regulations for most new construction and additions and renovations to existing structures within the commonwealth. As such, the responsibility of a planning commission in building code regulation has largely been diminished. Nonetheless, planning commission members should familiarize themselves with the building code regulations and be educated about how the UCC affects the general goals of community development.

For example a strong housing or community development section of a comprehensive plan should take into account the enforcement of the UCC and ways in which building code enforcement carries out the community's stated goals and objectives. Likewise, an enhanced historic preservation element of a comprehensive plan ought to simulate careful review of provisions of a zoning ordinance related to historic preservation. If a Historic Architectural Review Board (HARB) exists, recommendations can be made regarding the historic code.

Since April 2004, "over 90% of Pennsylvania's 2,562 [sic]¹ municipalities have elected to administer and enforce the UCC locally using their own employees or via certified third-party agencies (private code enforcement agencies) that they have retained. In these municipalities, the Department of Labor and Industry (L&I) has no code enforcement authority, except where the municipality lacks the services of a person certified as an "Accessibility Inspector/Plans Examiner." If a municipality has "opted out," L&I is responsible for all commercial code enforcement in that municipality. L&I also has sole jurisdiction for all elevators and all state-owned buildings, no matter where they are located. Certified third-party agencies hired by property owners (or their contractors) enforce the residential requirements of the UCC in all opt-out municipalities."²

References

1. The current number of municipalities is 2,561.
2. Uniform Construction Code. Pennsylvania Department of Labor and Industry. Retrieved March 18,2014 from http://www.portal.state.pa.us/portal/server.pt/community/uniform_construction_code/10524

VI. Membership, Appointment, and Organization

As stipulated under Sections 202 and 203 of the MPC, planning commissions are to be comprised of three to nine members who must be residents of the municipality. Legal residence is best determined by where a person lives; it not only includes a person's intention to live somewhere, but also a physical presence. Under Section 903(b) of the MPC, no individual may sit on both the planning commission and the municipal zoning hearing board.

Members of the planning commission are appointed by the municipality's appointing authority, subject to the approval of the governing body (except where both are the same). An appointing authority is the mayor in cities, the board of commissioners in counties, the council in incorporated towns and boroughs, the board of commissioners in townships of the first class, the board of supervisors in townships of the second class, or as may be designated in the law providing for the form of government or in the charter for home rule municipalities.

The governing body that appoints the planning commission must ensure the diversity of experience, expertise, and interests in the composition of the planning commission's membership. Members of various professions should be sought out for membership, and sitting members of the planning commission should endeavor to increase their own level of planning education during their time on the board. There are no formal requirements to serve on a planning commission. However, the governing body, when appointing members, should review potential appointees' qualifications carefully.

The planning commission itself, when faced with a vacancy, should review potential appointees' qualifications and make recommendations to the governing body.

The term of a planning commission member is four years. It is recommended that terms should expire December 31 of each four-year term. To avoid major changes at any one time, the terms of its members are staggered. Any vacancy occurring during a term of office is filled only for the unexpired portion of the term.

A planning commission must maintain a prescribed number of citizens as part of its complement. Only a certain number of planning commissioners can be officers or employees of the municipality. The ratios are as follows: on a planning commission of three members, at least two shall be citizen members; on a planning commission of four or five members, at least three shall be citizen members; on a planning commission of six or seven members, at least five shall be citizen members; and on a planning commission of either eight or nine members, at least six shall be citizen members.

New by amendment of the MPC in 2015, a planning commission may have one to three alternate members. Alternates are appointed by the governing body by resolution and, like regular members, must be residents and have four-year terms. Planning commission alternates may not serve on the zoning hearing board or as a zoning officer.

The planning commission chairman may designate an alternate to sit for an absent, recused, or disqualified member as may be needed to reach a quorum. When seated, an alternate has the powers and duties of a regular member including the right to participate in all proceedings and discussions and the right to cast a vote. An alternate must serve in all proceedings involving a matter or case that was initiated when the alternate was seated until a final decision is made.

It is possible for a member of a planning commission to be removed from office. Removal however, requires a majority vote of the governing body. Any such removal of a member must be based on just cause. The primary grounds for removal could be any of the following: malfeasance – committing an unlawful act in office; misfeasance – committing a lawful act in an unlawful manner in office; and nonfeasance – failure to perform the duties of the office.

A member of a planning commission that is threatened with removal must receive fifteen days' advance notice of the intent by the governing body to take the required vote. The member has a right to a hearing under the MPC, upon written request, and also under the Local Agency Law, 2 Pa. C. S. § 551.

The commonwealth has a long history of volunteer involvement in local government and the duties and responsibilities of the planning commission are carried out largely by citizens on a volunteer basis. However, the MPC allows for the governing body to provide compensation for planning commission members. If the governing body elects to do so, such compensation must be less than the amount authorized by statute and ordinance to be paid to the members of the governing body. In addition, the MPC allows the governing body to provide for reimbursement of the planning commission members for any necessary and reasonable expenses incurred in the performance of their duties.

If reimbursement expenses are not part of the annual budget approved by the governing body, approval should be obtained from the governing body prior to incurring the expense. Allowable expenses may include registration fees for planning conferences, seminars or workshops, reasonable cost of meals while in attendance, and mileage reimbursement to and from the training site.

VII. General Operating Procedures for Planning Commissions

Annually the planning commission elects its own chairman and vice-chairman and any other officers that it feels are necessary. Practical experience has shown that it is difficult for a member to serve as a recording secretary and also contribute meaningfully to matters under discussion. An officer serves an annual term and is permitted to succeed him or herself. A planning commission has the power to make, alter, rescind, and reinstate rules for its procedure, provided that they are consistent with the rules of the municipality and laws of the commonwealth. A planning commission may adopt bylaws. Appendix III: Suggested Bylaws for Planning Commissions contains model bylaws.

At the discretion of the governing body, a planning commission may be provided with legal counsel by the municipal solicitor or a solicitor appointed to the planning commission.

The MPC requires that a planning commission keep full public records and ensure that all records become property of the municipality.

The Municipal Records Act, part of omnibus Act 177 of 1996, amended by Act 27 of 1998, 53 Pa.C.S. § 1381, et seq., and the Pennsylvania Historical and Museum Commission’s Municipal Records Retention Manual establish procedures and standards for records retention, including mandatory record retention and disposition schedules.

The Pennsylvania Right-to-Know Law, 65 P.S. § 67.101, et seq. (RTKL) applies to the records of a planning commission. Most requests will be submitted to the municipal open records officer for determination as to whether a responsive record is a “public record” and otherwise subject to a privilege or exception to disclosure. Unless an extension of time is warranted, the open records officer has five business days to respond to a request. In the event a request for a record is made to an individual member of the planning commission, the individual should immediately notify the municipal open records officer of the request.

Each planning commission member should be provided with a packet containing basic information. For example, the packet should certainly include a copy of the MPC, the municipality’s comprehensive plan, zoning ordinance, and subdivision and land development ordinance. Copies of the municipality’s official Act 537 sewage facilities plan, stormwater management ordinance, and other pertinent ordinances will also prove to be useful, and should be included in the informational packet.

VIII. Planning Commission's Relationship to the Governing and Appointed Bodies

Governing bodies are empowered under MPC Section 201 to create planning commissions to perform community planning activities and coordinate municipal planning programs. In doing so, a governing body specifies the planning commission's powers, duties, and functions that include the preparation of the municipal comprehensive plan.

As discussed in the *Comprehensive Planning Series Publication #3*, the comprehensive planning process should be inclusive of the governing body's interests and perspectives as the community's elected leaders. As such, the planning commission must ensure that the governing body, among other community stakeholders, is actively involved in the planning process. In doing so, the process establishes the foundation for the governing body to embrace and adopt the community's comprehensive plan. The adopted plan in turn serves as the basis from which the planning commission makes objective, unbiased recommendations on zoning, land development and other community planning matters to the governing body for its consideration in making informed policy decisions.

A collaborative comprehensive planning process not only forges an interdependent relationship between the governing body and planning commission, but involves the planning commission with many of the municipality's other appointed bodies that are responsible for various functions and services. Such appointed bodies typically include the zoning hearing board, HARB, parks and recreation boards, sewer and water authorities, environmental advisory councils, etc.

It is wise for the planning commission to keep a harmonious relationship with other municipal officials. It should meet and communicate on some regular basis with the governing body and various municipal groups. It should establish itself as a key member of the municipal "team" and as a provider of solutions not problems. And, it should quickly address any instance of conflict lest it festers into distrust or worse an adversarial relationship with the governing body or other municipal groups.

IX. Planning Commission Reports to the Governing Body

Section 207 of the MPC requires a planning commission to make an annual report to the governing body by March 1 each year. Among other topics, such reports may include a summary of the reviews performed by the planning commission in the prior year and identification of planning issues or concerns, including possible amendments to the planning ordinances that the planning commission seeks to bring to the attention of the governing board. Also, the MPC generally requires a planning commission to maintain records of its actions and to provide such records for the possession of the governing body.

X. Planning Commissions and the Need for Technical Planning Services

As previously discussed, planning commissions are primarily responsible for and charged with preparing and maintaining the municipality's comprehensive plan. In addition, the planning commission is also charged with preparing the municipality's zoning and subdivision and land development ordinances. These vital community planning activities take extensive time and require particular technical expertise that often requires outside professional assistance to augment the planning commission's limited capabilities (e.g., lack of time as citizen planners, no full-time municipal planning staff, need for special planning expertise, etc.).

Section 210 of the MPC authorizes the planning commission, with the consent of the governing body, to accept and utilize any funds, personnel or other assistance made available by the county, the commonwealth or the Federal government or any of their agencies, or from private sources. The governing body in turn may enter into agreements or contracts for the purpose of utilizing the funds or assistance in or for the planning commission to carry out its duties and responsibilities.

For the reasons specified above, many municipalities often hire a professional consultant to assist the planning commission in carrying out its duties. Choosing the right consultant for the job, and for a community, is a process that requires great care and attention to ensure the governing body's judicious allocation of public resources. At a minimum, consultants should be selected based on their comprehension of the community's needs/problems, commitment to assign staff having the appropriate skills and experience, offering of the most creative approach towards the project, and adherence to deliver the best work effort for the cost.

The Pennsylvania Local Government Partnership has published the "Working with Consultants Guidebook" at http://www.palocalgovtraining.org/pdfs/working_with_consultants.pdf. In addition, the American Planning Association (APA) has published detailed guidance for selecting a consultant at <https://www.planning.org/consultants/choosing/part1.htm>.

In addition to professional consultants, municipalities may also obtain assistance from other sources that include, but are not limited to, the following:

- **County planning agencies** – Pennsylvania counties have a long tradition of being a source of capacity and expertise in planning and land use. Currently, every county has a planning commission, department, or both, or other agency like a development department that handles planning matters. Every county has staff involved in planning. Many county planning agencies offer assistance to local governments in their counties.
- **Regional planning agencies** – Agencies such as the Delaware Valley Regional Planning Commission, Southwestern Pennsylvania Commission, etc., are most often relied upon to provide niche technical services and products, including but not limited to, sophisticated transportation planning models (e.g., travel demand model, transit demand models, etc.), extensive geospatial datasets, special reports on various community planning topics and issues germane to its geographic region. In addition, regional planning agencies also provide funding for various planning activities through competitive application processes.
- **Colleges and universities** – College and university faculty and students often provide a low cost, yet invaluable resource for outside technical assistance that not only benefits the community, but forges and strengthens town and gown partnerships. Many communities have received excellent planning assistance through their local educational institutions often at a lower cost than private or other public sector planning assistance.
- **The Governor's Center for Local Government Services** – the Center provides municipalities and local government officials with assistance and support in a variety of areas, including technical and financial assistance, as well as training in partnership with the Local Government Training Partnership. More information regarding the Center's services is available at <http://www.newPA.com/local-government/services-provided>.

A Note About Studies...

Section 301.2 of the MPC provides for a planning commission to “make careful surveys, studies and analyses of housing, demographic, and economic characteristics and trends; amount, type and general location and interrelationships of different categories of land use; general location and extent of transportation and community facilities; natural features affecting development; natural, historic and cultural resources; and the prospects for future growth in the municipality.”

Conducting studies is beneficial, but studies can become an end in themselves and, worse yet, not used. The MPC intends that municipalities conduct studies as part of the process to create a wise and effective comprehensive plan. The purpose of studies is not to generate encyclopedic tabulations of data. Planning commissions should avoid collecting and presenting data not of particular relevance to the municipality’s problems, needs, or opportunities. Rather, studies should provide “discoveries” and “intelligence” to understand the community’s issues and lead to ideas and solutions to improve the community that will be written into the comprehensive plan then implemented.

XI. Issues Every Planning Commission Member Should Consider

Approaching the Art of Planning: Reactive vs. Proactive

Planning is often more of an art than a science and, as such, a good deal of successful planning relies on timing. The members of a planning commission have a decision to make regarding the approach that they take in carrying out their duties and responsibilities. As stated at the opening of this guidebook, the planning commission member's first responsibility is to help his or her community develop a vision for the future growth, and then seek out a way to implement that vision through the comprehensive plan and by reviewing plans for new development. There are very different approaches to how those two items – the comprehensive plan and the review of new development – can be addressed by the members of the commission. They can take each item as it presents itself and attempt to deal with it, or they can take a proactive approach and attempt to head off any potential problems before they occur. By taking the former approach, (i.e. reacting to and processing subdivision and land development plans), the planning commission is technically fulfilling its obligations. However, if it does not attempt to foresee any potential areas of difficulty, it may not be responsibly carrying out its tasks.

When the governing body has adopted a comprehensive plan, its departments, agencies, and appointed authorities must submit projects to the planning commission for recommendations. Each project represents an opportunity for a planning commission to influence the direction of growth and development within their community. A planning commission should analyze the proposed projects in terms of criteria provided in Sections 303 and 304 of the MPC for establishing the legal status of a comprehensive plan. This is a major effort, but must be done for projects that relate to, for example, the location or opening of any street, public ground or watercourse, or the adoption, amendment or repeal of an official map, subdivision and land development ordinance, zoning ordinance or provision for a capital improvements program.

Although the planning commission serves in an advisory capacity, this does not prevent the planning commission from acting as a pilot to chart change within the community. For example, some external factors, such as a new road or interchange location, may significantly alter both the traffic and land use patterns within the community. This could necessitate an update of the comprehensive plan and quite possibly a zoning amendment. An alert planning commission would be aware of this situation and could present both the problem and possible solutions to the governing body.

Public Participation

Public participation is vitally important to the planning process for two reasons: (1) It allows citizens to have say in the actions and decisions of their governments, including community planning and land use regulations that governing bodies and planning commissions undertake as authorized under the MPC; and (2) it results in better and stronger plans through consensus building and stakeholder advocacy for successful plan implementation.

“Public participation is essential to the planning process—whether it entails a planning commission meeting, zoning board hearing, or visioning exercise that is part of developing a comprehensive plan.”

The MPC stipulates certain public participation requirements that planning commissions must achieve in carrying out their planning duties and responsibilities. These include the following:

- **Comprehensive plan adoption** – Section 302 (a) of the MPC requires that “before adopting or amending a comprehensive plan, or any part thereof, the planning agency shall hold at least one public meeting before forwarding the proposed comprehensive plan or amendment thereof to the governing body.”

- **Zoning ordinance adoption** – Section 607(b) of the MPC stipulates “...the planning agency shall hold at least one public meeting pursuant to public notice and may hold additional public meetings upon such notice as it shall determine to be advisable.”
- **Curative amendments to the zoning ordinance** – Sections 609.1 and 609.2 of the MPC stipulate the requirements for landowner and municipal curative amendments, respectively. In both instances, the governing body shall hold a public hearing before voting on the enactment of an amendment.

Public meeting is defined by Section 107 of the MPC as an open forum held pursuant to notice under the Pennsylvania Sunshine Act (Act 94 of 1986, 65 Pa.C.S.A. § 701). In general, a planning commission is required to conduct its meetings in conformance with the Sunshine Act and its meetings must be made known through public notice according to Section 709 of the Act. Furthermore, its meetings must be open to the public and the public must be permitted to participate in the meetings in accordance with Section 710.1 of the Act. Finally, the planning commission must keep minutes of its meetings and all votes must be publicly cast and recorded.

Planning commissions must recognize that the MPC’s public participation specifications constitute the minimal legislative requirements. Instead, effective planning processes should have multiple and varied public participation opportunities programmed throughout their durations, i.e., from beginning to end. Such opportunities include but are not limited to:

- Project steering committees comprised of municipal officials, community stakeholders, and citizens alike;
- Telephone or in-person interviews with key stakeholders, etc.;
- Paper or web-based surveys;
- Community design charrettes;
- Public open houses;
- Interactive project websites and social media;
- On-line meetings (e.g., webinars);
- Showcasing the planning initiative at community events.

Planning commissions may consult the following publications for additional guidance on various public participation and public outreach tools and methods:

- The United States Environmental Protection Agency’s Public Participation Guide (<http://www.epa.gov/oiamount/public-participation-guide/index.html>)
- The American Planning Association’s Community Engagement Publication Brief (<http://www.planning.org/research/arts/briefingpapers/pdf/engagement.pdf>)

Ethics

The activities of the planning commission do come under the scrutiny of the public. It is therefore important that any activities of the planning commission avoid even the hint of any possible unethical conduct or activity.

The Public Official and Employee Ethics Act, 65 Pa.C.S. § 1101 et seq. (Ethics Act), applies to individuals who are defined by the Act to be a “public official.” Members of a planning commission delegated with authority to make decisions on subdivision and land development plans qualify as “public officials” and are subject to the requirements of the Ethics Act.

Most planning commissions do not make decisions on applications; rather, they make recommendations to the governing body of the municipality. When a planning commission functions as an advisory body, the Ethics Act is not applicable to the individual members of the planning commission. Nonetheless, it is strongly recommended that the planning commission consult with its solicitor concerning the applicability of the Ethics Act, or contact the Pennsylvania Ethics Commission.

The planning commission may at some time be confronted with an issue in which one or more of its members has a financial interest. In such instances where the planning commission has been delegated decision-making authority, the member or members of the planning commission who may have a financial interest in the matter should disclose the nature of his or her interest in the matter and excuse themselves from any deliberation and voting. Even if the member feels that there will be no conflict of interest it may not appear this way to the public. By explanation of the situation or relationship, the disclosure will "clear the air" and allow the public to make an informed judgment. It is always wise to consult with a solicitor if doubt about conflict exists and to disclose any potential conflict of interest prior to casting a vote.

Where the planning commission has been delegated decision-making authority, members are subject to the conflict provisions of the Ethics Act. Section 1103(a) of the Ethics Act provides that "[n]o public official or public employee shall engage in conduct that constitutes a conflict of interest." The Ethics Act defines "conflict of interest" as "[u]se by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for a private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affect to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with he or a member of his immediate family is associated." "De minimis economic impact" is defined as "[a]n economic consequence which has an insignificant effect." Section 1103(j) of the Ethics Act requires, in the event of conflict of interest under the Ethics Act, that recusal of the individual with the conflict must "publicly announce and disclose the nature of his interest [the conflict of interest] as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken." The individual recused may not participate in the matter from which he is recused. That is, he may not participate in the discussion, make a motion, second a motion, or vote on a motion relating to the matter.

The Ethics Act also requires an individual who is defined by the Act to be a "public official" to annually file financial disclosure statements. Members of a planning commission *that has been delegated decision-making authority* on subdivision and land development plans are required to make such filings. Based on an opinion of the Ethics Commission, planning commissioners *servicing in an advisory capacity only* are not required to make these filings. However, because the law on this issue is not well-established, it is recommended that they do so and also consult with their solicitor on the current law.

Planning Ethics

Recognizing that planning commission members appointed by the governing body serve in a public capacity authorized under the MPC, they are obligated to conduct themselves in an ethical and professional manner. According to the APA, there are two standards set for ethical behavior in the field of planning. The first is a Code of Ethics binding on members of the American Institute of Certified Planners (AICP) and the second standard is [APA's Ethical Principles in Planning](#), which applies to citizens and non-AICP certified planners including elected and appointed officials, such as planning commissioners. This standard is not binding; it is a set of guidelines. However, some planning commissions formally adopt the ethical principles to assist them with ethical public decision making.

References

1. American Planning Association. "Planners' Communications Guide: Strategies, Examples, and Tools for Everyday Practice." Accessed online May 23, 2014 at <http://www.planning.ri.gov/documents/comp/APA%20Communication%20Guide.pdf>
2. *What is Planning?* American Planning Association. Retrieved April 9, 2014 from <https://www.planning.org/aboutplanning/whatisplanning.htm>.

XII. Planning Assistance from DCED

DCED's Governor's Center for Local Government Services (Center) provides a full range of technical and financial services to all of Pennsylvania's local governments. The Center is the principal state agency responsible for helping with planning and land use matters discussed in this publication.

Local government officials, planners, and other interested individuals have several sources of assistance from the Center:

- **Toll-free telephone number** – 888-223-6837. Callers will be connected with staff that has knowledge of planning, land use, zoning, subdivision and land development, and the PA Municipalities Planning Code.
- **Website** – dced.pa.gov/local-government. There are helpful pages under Community Planning, plus information on the topics listed below.
- **Publications** – dced.pa.gov/local-government/publications. This and the other nine Planning Series publications listed in the Preface can be downloaded and printed for free, or hard copies can be purchased at cost. The website also has publications with suggested provisions for floodplain management ordinances, plus publications on many topics from fiscal management to intergovernmental cooperation to open meetings.
- **Training** – <https://palocalgovtraining.org>. DCED provides funding for local government training programs via the PA Local Government Training Partnership. There are training courses, videos, and online instruction on a variety of topics, including planning and land use, plus ten fact sheets on planning and land use topics.
- **Land use law library** – www.landuselawinpa.com. DCED and the PA Local Government Training Partnership maintain an online library of significant court cases on zoning, subdivision and land development, and other land use topics.
- **Planning and land use eLibrary** – <http://elibrary.pacounties.org>. DCED and the County Commissioners Association of Pennsylvania maintain an online library of comprehensive plans, zoning ordinances, and subdivision and land development ordinances in effect in Pennsylvania counties, cities, boroughs, and townships.
- **Financial assistance** – dced.pa.gov/program. Currently DCED provides funding for local government planning through the Municipal Assistance Program. MAP offers up to 50 percent grants for costs of undertaking comprehensive plans, zoning ordinances, subdivision and land development ordinances, and more.

XIII. Other Planning Assistance

Assistance and training on planning and land use are available from other sources:

- **Pennsylvania Chapter of the American Planning Association (APA-PA)** – The Pennsylvania Chapter of the American Planning Association sponsors training and professional development opportunities to its members through its annual fall conference. In addition, APA-PA's six regional Sections sponsor training opportunities that are often driven to afford members the opportunity to earn AICP (American Institute of Certified Planners) Certification Maintenance Credits. More information on APA-PA is available online at <http://planningpa.org/>.
- **Pennsylvania Local Government Training Partnership** – The Pennsylvania Local Government Training Partnership is a training initiative between the Governor's Center for Local Government Services and Pennsylvania's statewide associations representing local governments. More information may be obtained from its website at <https://palocalgovtraining.org/>.
- **Local government associations** – In addition to programs through the PA Local Government Training Partnership, Pennsylvania's statewide associations representing different categories of local governments also offer annual conferences and training programs, including planning and land use, to their member local governments.
- **The Pennsylvania Municipal Planning Education Institute (PMPEI)** – PMPEI was established in 1992 for the purpose of providing courses in community planning and land use regulations for planning commissioners, zoning hearing board members, zoning administrators, elected officials, and others with an interest or involvement in planning. More information on PMPEI may be obtained on its website at <http://extension.psu.edu/community/pmpei>.

Appendix I: Additional Resources and Readings for Planning Commissioners is a valuable bibliography and resource list that provides the basic resource library for any planning commissioner in the commonwealth.

XIV. Conclusion

The job of the planning commission is not an easy one, and commissioners must juggle many difficult tasks if they are to be ultimately successful. This guidebook is designed as a primer for many of those tasks, and is intended to be a starting point for local governments as they either begin or further develop their planning capabilities.

Planning commissioners are leaders in their communities, and as such, have great potential to shape the future of their homes. As a whole, the planning commission also has many responsibilities. It is expected to oversee the growth and development of the community and to ensure that the community's infrastructure is prepared for any growth and development that may occur. It must advise the governing body on matters relating to planning and community facility needs. It is obligated to prepare amendments to planning and planning related ordinances if such become necessary. It must bear the responsibility of advising the governing body on the action that should be taken on subdivision proposals and development plans.

It can also be responsible for a variety of other activities as are specified in the MPC. The responsibilities are considerable, the consequences are important, and the tangible rewards for providing such service are usually difficult to discern. However, thousands of individuals across the commonwealth willingly provide their time and services to serve in such a capacity. They are leaders, and they are visionaries. For Pennsylvania's many communities, that task falls first to the planning commission. It will not be easy, but a healthy, vibrant Pennsylvania – in all of its regions, cities, townships, and boroughs – is the reward.

Appendix I: Additional Readings and Resources for Planning Commissioners

Resources

Governor's Center for Local Government Services: dced.pa.gov/local-government/community-planning
The Governor's Center for Local Government Services serves as a resource for local government officials, developers, and citizens interested in planning to improve, grow, and enhance communities. It provides valuable tools that will support wise land use decisions and encourage economic development, a healthy environment, and strong communities. More information regarding the Center's services may be obtained at dced.pa.gov/local-government/services-provided.

American Planning Association: www.planning.org

American Planning Association Planning Commissioners Service: www.planning.org/commissioners/

Pennsylvania Chapter of American Planning Association: <http://planningpa.org/>

Pennsylvania Municipal Planning Education Institute (PMPEI): <http://extension.psu.edu/community/pmpei>

Pennsylvania Local Government Training Partnership: <https://palocalgovtraining.org/>

Planners Web – News and Information for Citizen Planners: www.plannersweb.com

Planetizen: The Planning & Development Network: www.planetizen.com

Further Reading for Planning Commission Members

As of this writing, the American Planning Association – at <http://www.planning.org/library> – maintains lists of suggested readings on planning:

- Essential Planning Library
- 100 Essential Books of Planning (1909 – 2009)
- An Annotated List of Electronic and Print Resources for Practicing Planners, Scholars, and Students of Planning

Appendix II: Model Ordinance for Creating a Planning Commission

AN ORDINANCE NO.

An Ordinance signifying the intention and desire of the _____ (Board of Supervisors, Board of Commissioners, Council) of the _____ (Township, Borough, City) of _____ (County) Pennsylvania, to create and establish a Planning Commission under the provisions of the Pennsylvania Municipalities Planning Code Act 247 of 1968, P.L. 805, *as reenacted and amended, 53 P.S. § 10101, et seq.*

BE IT ORDAINED and ENACTED by the _____ (Governing Body) of the _____ (Township, Borough, City) of _____ (County).

Section 1. That the _____ (Board of Supervisors/Board of Commissioners/Council) of the _____ (Township, Borough, City) of _____ (County) hereby signifies its intention and desire to organize a Planning Commission under the provisions of Article III of the Pennsylvania Municipalities Planning Code.

Section 2. The Planning Commission shall consist of ____ (3-9) members, all of whom shall be citizens of the _____ (Township, Borough, City) of _____ (County).

The term of office of the members shall be four (4) years and should expire on December 31 or until a successor is appointed, except that the terms of the members first appointed shall be so fixed that on a commission of eight (8) members or less, no more than two (2) shall be reappointed during any future calendar year, and on commissions of nine (9) members, no more than three (3) shall be so reappointed or replaced. In the event of vacancies, the governing body shall appoint a member to fill the unexpired term.

The members of the Planning Commission shall be appointed by the _____ (Board of Supervisors/Board of Commissioners/Council) by resolution which shall also state the term to be filled by each planning commissioner.

***NOTE:** Elected or appointed officers or employees of the municipality may serve on the planning commission. However, on a commission of three members at least two members shall be citizen members; on a commission of four or five members at least three members shall be citizen members; on a commission of six or seven members at least five shall be citizen members; and on a commission of eight or nine members at least six shall be citizen members.

Section 3.

- A. The planning commission shall at the request of the _____ (Board of Supervisors, Board of Commissioners, Council) have the power and shall be required to prepare the comprehensive plan for the development of the municipality as set forth in the MPC and present it for the consideration of the _____ (Board of Supervisors, Board of Commissioners, Council).
- B. The planning commission shall maintain and keep on file records of its actions. All records and files of the planning commission shall be in the possession of the governing body.
- C. The planning commission at the request of the governing body may:
- (1) Make recommendations to the governing body concerning the adoption or amendment of an official map.
 - (2) Prepare and present to the governing body of the municipality a zoning ordinance, and make recommendations to the governing body on proposed amendments to it.
 - (3) Prepare, recommend and administer subdivision and land development and planned residential development regulations.
 - (4) Prepare and present to the governing body of the municipality a building code and a housing code and make recommendations concerning proposed amendments thereto.
 - (5) Do such other acts or make studies as may be necessary to fulfill the duties and obligations imposed by the MPC.
 - (6) Prepare and present to the governing body of the municipality an environmental study.
 - (7) Submit to the governing body of a municipality a recommended capital improvements program.
 - (8) Prepare and present to the governing body of the municipality a water survey, which shall be consistent with the State Water Plan and any applicable water resources plan adopted by a river basin commission. The water survey shall be conducted in consultation with any public water supplier in the area to be surveyed.
 - (9) Promote public interest in, and understanding of, the comprehensive plan and planning.
 - (10) Make recommendations to governmental, civic, and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals.
 - (11) Hold public hearings and meetings.
 - (12) Present testimony before any board.
 - (13) Require from other departments and agencies of the municipality such available information as relates to the work of the planning agency.
 - (14) In the performance of its functions, enter upon any land to make examinations and land surveys with the consent of the owner.
 - (15) Prepare and present to the governing body a study regarding the feasibility and practicability of using renewable energy sources in specific areas within the municipality.
 - (16) Review the zoning ordinance, subdivision and land development ordinance, official map, provisions for planned residential development and such other ordinances and regulations governing the development of land no less frequently than it reviews the comprehensive plan.

***NOTE:** Listed above are all of the duties that the MPC enables a governing body to authorize its planning commission to perform. A governing body may elect to authorize its planning commission to perform all of the duties listed by the MPC or a limited number of the duties. In the latter case, C. should specify the specific duties.

Section 4. The planning commission may, with the consent of the governing body, accept and utilize any funds, personnel or other assistance made available by the county, the commonwealth, or the federal government, or any of their agencies, or from private sources. The governing body may enter into agreements or contracts regarding the acceptance or utilization of the funds or assistance in accordance with the governmental procedures of the municipality.

Section 5. All other resolutions and ordinances or parts thereof, inconsistent herewith, are hereby repealed.

Duly presented and ordained and enacted at a regular meeting of the _____ (Governing Body) of the _____ (Township, Borough, City) of _____ (County), Pennsylvania held the day of _____, 20_____.

ATTEST: _____

Secretary

Appendix III: Suggested Bylaws for Planning Commissions

ARTICLE I. NAME OF COMMISSION

The name of this organization shall be _____ (insert County, City, Township, Borough as appropriate) Planning Commission.

ARTICLE II. AUTHORIZATION

The authorization for the establishment of this Planning Commission is set forth under the Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as reenacted and amended, 53 P.S. § 10101, et seq. Powers and duties are delegated to the Planning Commission by the _____ (insert "Council," "Board of Commissioners" or "Board of Supervisors," as appropriate) of _____ (insert County, City, Township, Borough as appropriate) by Ordinance _____ (insert number) of _____ (insert date) in accordance with the above-mentioned enabling law.

ARTICLE III. MEMBERSHIP

Membership shall consist of [three, five, seven or nine] persons to be appointed by the _____ (insert "Council," "Board of Commissioners" or "Board of Supervisors," as appropriate). The term of office of members shall be four (4) years, except for those members first appointed after creation of the planning commission and those members appointed to fill a vacancy and for the unexpired term of that vacated seat.

ARTICLE IV. VOTING

Section 1. Each member shall be entitled to one vote.

Section 2. Voting shall be by roll call.

Section 3. If a quorum is present, a simple majority of the votes cast on any particular matter of business will carry the issue.

Section 4. A record of the roll call vote shall be kept as a part of the minutes.

Section 5. A motion from the floor must be made and passed in order to dispense with any item on the agenda.

ARTICLE V. OFFICERS

Section 1. The Officers of the Planning Commission shall consist of a Chairman, Vice-Chairman, and Secretary.

Section 2. The Chairman shall preside at all meetings and hearings of the Planning Commission and shall have the duties normally conferred by parliamentary usage on such officers.

Section 3. The Secretary shall keep the minutes and records of the Commission, and with the assistance of such staff as is available, shall prepare the agenda of regular and special meetings under the direction of the Chairman, provide notice of all meetings to Commission members, arrange proper and legal notice of hearings, attend to correspondence of the Commission, and such other duties as are normally carried out by a Secretary. [Alternatively, the Bylaws may provide for a municipal clerk or Secretary to keep the minutes and records.]

ARTICLE VI. ELECTION OF OFFICERS

Section 1. An annual organization meeting shall be held during the first regular meeting in January or at a special meeting following the organization meeting of the governing body.

Section 2. Nomination shall be made from the floor at the annual organization meeting and election of the officers specified in Section I of Article IV shall follow immediately thereafter.

Section 3. A candidate receiving a majority vote of the entire membership of the Planning Commission shall be declared elected, and shall serve for one year or until his successor shall take office.

Section 4. Vacancies in office shall be filled immediately by regular election procedure.

ARTICLE VII. MEETINGS

Section 1. Public notice shall be published of all meetings.

Section 2. Regular meetings will be held on the _____ (insert day of week, week of month) at _____ (insert time of day) at _____ (insert location). In the event of conflict with holidays or other events, a majority at any meeting may change the date of said meeting.

Section 3. A quorum shall consist of ____ (insert simple majority number as appropriate depending on the size of the planning commission established by the governing body). A quorum is necessary to transact business.

***NOTE:** Section 207 of the MPC, Conduct of Business, does not set minimum requirements for a quorum to do business at a meeting of a planning commission. A quorum is best determined by a majority of members appointed to the planning commission by the governing body.

Section 4. Special meetings may be called by the Chairman. It shall be the duty of the Chairman to call a special meeting when requested to do so by a majority of members of the Commission. The Secretary shall notify all members of the Commission not less than 24 hours in advance of such special meeting and provide notice to the public as required by the Sunshine Act, Act 94 of 1986, *as amended*, 67 Pa. C.S. § 701, *et seq.*

Section 5. All meetings shall be conducted in conformance with the requirements of the Sunshine Act. All meetings shall be open to the general public. Any person attending a meeting shall have the right to use recording devices to record all proceedings. Use of devices such as audio, video, or other recording equipment shall be subject to rules and guidelines prepared and approved by the commission. However, in accordance with the Sunshine Act, such rules or restrictions shall not serve to exclude use of recording devices to record the proceedings of a public meeting.

ARTICLE VIII. ORDER OF BUSINESS

The order of business at regular meetings shall be:

- a. Roll call
- b. Reading of minutes
- c. Communications [and bills]
- d. Reports of Officers
- e. Old business
- f. New business
- g. Public comments and questions
- h. Adjournment

ARTICLE IX. EMPLOYEES

Within the limits imposed by the funds available for its use, the Commission may employ such staff personnel and/or consultants as it sees fit to aid in its work. Appointments shall be made by a majority of the entire Commission membership.

ARTICLE ____ . SUBDIVISION AND LAND DEVELOPMENT PLANS

(If the governing body has delegated decision-making authority to the Planning Commission, describe in this article the required procedures for consideration and action on a proposed subdivision and/or land development plan. In such case, the Planning Commission must conform its actions to the procedural requirements set forth in Article V of the MPC.)

ARTICLE X. PUBLIC HEARINGS

Section 1. (Include if the governing body has delegated decision-making authority to the Planning Commission). The Planning Commission may hold public hearings subject to public notice, as required by the MPC, on proposed subdivision and land development plans.

Section ____. The Planning Commission may hold public hearings when it decides that such hearings will be in the public interest.

Section ____. Notice of the time and place of a public hearing shall be published pursuant to public notice as provided for in the MPC. [or by alternate described means.]

Section ____. The matter before the Commission shall be presented in summary by a member of the Commission designated by the Chairman, and parties in interest shall have the privilege of the floor.

Section ____. A record shall be kept of those speaking before the Commission at such hearings.

ARTICLE XI. AMENDMENTS

These bylaws may be amended by a majority vote of the entire membership of the Planning Commission. Adopted this date _____.

Attested:

Secretary

Signature of Chairman

Pennsylvania Department of Community & Economic Development
Governor's Center for Local Government Services
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

USPS 100
APPROVED POLY

Environmental Law Developments for Real Estate Lawyers

Douglas R. Blazey, Esq.

John R. Embick, Esq.

Montgomery Bar Association

Norristown, PA

February 15, 2024

Pennsylvania Constitution: Art. 1, Sec. 27 (the Environmental Rights Amendment) and Art. 1, Sec. 1

- *The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.*
- **AND**
- *All men are born equally free and independent, and have certain inherent and indefeasible rights, among those are of enjoying life and liberty, of acquiring , possessing and protecting property and reputation, and of pursuing their own happiness. (Art.1, Sec. 1)*

Pennsylvania Constitution: Art. 1, Sec. 27 (the Environmental Rights Amendment)

- *The Former Seminal Case: Payne v. Kassab, 312 A.2d 86 (Pa. Commw. 1973). The Payne Test:*
 - Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources?
 - Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum?
 - Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion? Id. at 94.

Pennsylvania Constitution: Art. 1, Sec. 27 (the Environmental Rights Amendment)

- *Robinson Township v. Commw., 83 A.3d 901 (Pa. 2013) (“Robinson II”); Former Chief Justice Castille’s Plurality Opinion about Art. 1, Sec. 27:*
 - *No process established*
 - *Ambiguity continues*
 - *Payne test is still the law*

Pennsylvania Constitution: Art. 1, Sec. 27 (the Environmental Rights Amendment)

- *Pennsylvania Environmental Defense Foundation v. Commonwealth, et al.*, 161 A.3d 911, 916 (Pa. 2017)
 - The Payne test is dead!
 - Balancing process is out
 - 40 years of jurisprudence swept away

Pennsylvania Constitution: Art. 1, Sec. 27 (the Environmental Rights Amendment)

- *Pennsylvania Environmental Defense Foundation v. Commonwealth, et al.*, 161 A.3d 911, 916 (Pa. 2017)
 - No new “test” created
 - Every level of government must comply
 - Self-executing

Pennsylvania Constitution: Art. 1, Sec. 27 (the Environmental Rights Amendment)

- *Some Important Commonwealth Court Decisions Regarding Art. 1, Sec. 27 subsequent to PaEDF:*
 - *Frederick v. Allegheny Township Zoning Hearing Board*, 196 A3d 677 (Pa Commw. Ct. 2018) *appeal denied*, No. 449 WAL 2018, ___ A3d___ (Pa. 2018) (ordinance pre-enactment study not necessary)
 - *Protect PT v. Penn Twp. ZHB*, 220 A.3d 1174 (Pa. Commw. Ct. 2019) (appellants failed to prove that zoning ordinance impairs rights under Art.1, Sec. 27)

Pennsylvania Constitution: Art. 1, Sec. 27 (the Environmental Rights Amendment)

- *Murrysville Watch Committee v. Municipality of Murrysville Zoning Hearing Board*, No. 579 C.D. 2020 (Pa. Commw. Ct. Jan. 24, 2022)(no ordinance pre-action environmental impact analysis required)
- *Marple Township v. Pa PUC*, No. 319 C.D. 2022 (Pa. Commw. Ct. March 9, 2023 (Opinion Not Reported)
 - Mandate does not arise from MPC
 - All agencies must comply
 - Remand to PUC for environmental study
 - But, “Opinion Not Reported”!

Pennsylvania Constitution: Art. 1, Sec. 27 (the Environmental Rights Amendment)

What's the take-away?

A duty seems to exist, but determining how to meet the duty remains ambiguous

But...the Embick Test

Pennsylvania Constitution: Art. 1, Sec. 27 (the Environmental Rights Amendment): The Embick Test

- Conduct a study, in advance, and identify the current, cumulative, and future effects of adverse environmental impacts of all activities associated with the proposed use. The study must identify and assess direct and indirect environmental effects that can be negative or positive; identify and assess impacts that are immediate, short-term or long-term; and which impacts can be incremental, compounding over time, or develop over the passage of years;
- Determine whether and to what degree the effects or impacts will infringe unreasonably upon or violate the protected rights and values (air, water, scenic, historical, natural, and esthetic) or unreasonably cause actual or likely deterioration of the listed values; and
- Unless the unreasonable effects or impacts of all activities associated with the proposed use can be eliminated, or reduced to a level where the impacts are not unreasonable, then the use cannot be permitted.