PENNSYLVANIA MUNICIPALITIES PLANNING CODE
(Act 247 of 1968)

Commentary for Proposed Amendments
1988

Senate Bill 535 **Printer's Number 1880**

General Assembly of the Commonwealth of Pennsylvania
LOCAL GOVERNMENT COMMISSION
Harrisburg, Pennsylvania
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This is a revision of a December, 1985, Commentary on SB 876 of the 1985-86 session, which was prepared by former Local Government Commission Assistant Director, Mark A. Zyvan, and former Legal Counsel, Andrew Sislo, Esq., with assistance from Virgil F. Puskarich. This April, 1988, edition of the Commentary reflecting SB 535, PN 1880, was prepared by current Commission Legal Counsel, Lee P. Symons, with assistance from other Commission staff. Ms. Sharon Dewalt was responsible for typing this commentary. Any questions regarding the contents of this commentary should be directed to Virgil F. Puskarich, Executive Director of the Local Government Commission.

The Local Government Commission was created by Act of 1935, May 29, P.L. 244, as amended, as a continuing agency to provide research and advice to the General Assembly of the Commonwealth of Pennsylvania on matters affecting political subdivisions and municipal governments.

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Acknowledgement

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INTRODUCTION

The Local Government Commission organized a Task Force in 1981 to comprehensively study the Pennsylvania Municipalities Planning Code. The Task Force undertook a section by section review of the Municipalities Planning Code in an attempt to remove inconsistencies, clarify ambiguities, and standardize procedures. The primary objective of the Task Force was to revise the Municipalities Planning Code, not to revolutionize planning. Several new provisions were added such as "transfer of development rights" and a "mediation option" to resolve certain land use disputes. The Task Force made an effort to avoid overturning existing land use case law.

The report of the Task Force was embodied in Senate Bill 1168, Printer's No. 1546. The bill was introduced in the Senate on November 30, 1983, and referred to the Senate Local Government Committee and was widely distributed for comment. It was amended in the Senate Local Government Committee. The bulk of the amendments were technical and editorial. Certain procedures were revised but the substance of the bill was not altered.

Senate Bill 1168, PN 2311, expired with sine die adjournment of the Legislature on November 30, 1984. The bill was then redrafted with additional technical amendments and reintroduced in the Senate in the 1985-1986 legislative session as Senate Bill 876, Printer's No. 1018, introduced in the Senate on May 14, 1985. After its introduction, additional amendments were proposed by the Local Government Commission staff to provide further clarification which the Task Force subsequently approved.

However, like its predecessor the previous session, Senate Bill 876 also expired upon adjournment of the General Assembly November 26, 1986. The bill was redrafted and introduced as Senate Bill 535, PN 588, on March 10, 1987. The Senate Local Government Committee considered several other amendments at its meeting on February 2, 1988, and the result was Senate Bill 535, PN 1758. On March 21, 1988, the Senate considered several additional amendments offered on the bill's third consideration on the floor of the Senate. Then the following day, by a vote of 45-2, the Senate finally adopted this measure. As with all previous versions, this most recent draft would standardize the style of the entire Code and, if finally approved by the General Assembly and signed by the Governor, would constitute amendment and reenactment of Act 247.

This commentary addresses the provisions of Senate Bill 535, Printer's No. 1880.

COMMENTARY

ARTICLE I - GENERAL PROVISIONS

Section 101: Short Title.

This section is not amended.

Section 102: Effective Date.

This section sets forth January 1, 1969, as the original effective date of the Act.

Section 103: Construction of Act.

This section is amended to clarify that the provisions of the MPC are not applicable to cities of the first class (Philadelphia) and cities of the second class (Pittsburgh) and counties of the second class (Allegheny).

Section 104: Constitutional Construction.

This section is not amended.

Section 105: Purpose of Act.

This section has been amended to delete the general statement of intent that recommendations made by a planning agency to a governing body be advisory only. The deletion has been made because the powers, duties, and responsibilities of planning agencies have been clearly defined in Articles II, III, V, and XI.

Section 106: Appropriations, Grants and Gifts.

This section is not amended.

Section 107: Definitions.

Subsection (a). The following definitions are (1) amended or added to clarify existing provisions in the MPC, or (2) added to explain new provisions proposed in the Code.

"Application for development." The word tentative is added to the definition since prefinal plans for Planned Residential Developments are referred to as "tentative" rather than preliminary in Article VII.

"Conditional use." This new term encompasses a land use which is not specifically permitted in a particular zoning district by a zoning ordinance

but which may be permitted upon application to the governing body pursuant to the provisions in Article VI. Section 603 authorizes the enactment of conditional use provisions in the zoning ordinance and prescribes the procedure for granting such uses.

"Land development." This existing definition is amended to clarify the nature, scope, and extent of the definition including its application to developments that occur on a single lot but which otherwise have broad impacts on the community (i.e., office buildings, shopping malls, fast food restaurants, etc.).

"Lot." This is a new definition added to give meaning to its use throughout the act. It is meant to include real property used, or intended to be used, as a unit.

"Mediation." This is a new term added to explain a new provision (Section 908.1) which permits settlement of disputes between or among interested parties in land use matters through use of a mutually acceptable independent third party.

"Mobilehome." This existing term is amended to clarify that it is referring to a dwelling type.

"Mobilehome lot." This term is amended to clarify that a mobilehome lot in a mobilehome park may be either owned by the occupant of the mobilehome or leased from a mobilehome park owner.

"Mobilehome park." This definition has been amended to clarify that a mobilehome park may be either a single parcel of land or contiguous parcels which have been designated as a mobilehome park and is by improvement intended for use as two or more mobilehome lots.

"Municipal engineer." This is a new term which is identical to the definition of "Engineer." The purpose of this addition is to insure that it has the same meaning as engineer whenever such terms are used interchangeably in the Code.

"Municipality." This definition is amended to add home rule muniipalities to the existing enumeration. This is merely a conformity to an existing provision of the Home Rule Charter and Optional Plans Law, 1972 P.L. 184, No. 62, which requires a home rule municipality to comply with the Municipalities Planning Code. See Section 302 of Act 62 of 1972.

"Nonconforming lot." This new term is added to clarify that a lot which does not conform in either size, shape, or area to the requirements of a zoning ordinance is "nonconforming." This new term is necessary because existing definitions of "nonconforming use" and "nonconforming structure" do not necessarily include the measurement or area of a parcel of land.

"Nonconforming structure." This existing definition is amended to clarify that the term applies to the expanse of the nonconforming structure on the lot, as well as the use of the structure.

"Official map." This new term is added to clarify that whenever the term "official map" is used throughout the Code, it refers only to the map adopted by ordinance pursuant to Article IV.

"Planned residential development." This existing definition has been amended to permit a developer to combine residential and nonresidential uses in a planned residential development since certain nonresidential uses are often integral to the comprehensive development of a neighborhood and to the community needs which the development will generate.

"Public grounds." This existing definition has been amended to expand the enumerated recreational uses set forth in the definition.

"Public hearing." This existing definition is amended to clarify the applicability of the term as used in other articles of the MPC. Generally, "public hearings" are conducted to obtain, add, and provide information.

"Public meeting." This existing definition is amended to clarify the applicability of the term as used in other articles of the MPC. "Public meetings" are conducted to take formal action. A cross-reference to the "Sunshine Act" is made to indicate the proper notice and advertising procedure for "public meetings."

"Special exception." This new term encompasses a land use which is not specifically permitted in a zoning district by a zoning ordinance but which may be permitted upon application to the zoning hearing board pursuant to the provisions of Article VI. Section 603 authorizes the enactment provisions for special exceptions in the zoning ordinance and prescribes the procedures for granting such uses.

"Subdivision." This existing term is amended to clarify that land partitioned by the court for distribution to heirs or devisees constitutes a subdivision. This amendment overrules the Tettemer decision which held that such partitions are not subdivisions and thus are exempt from land use regulation In re Estate of Tettemer, 26 D&C 3rd (1981), affirmed 311 Pa. Super. 635 (1983).

"Transferrable development rights." This new term describes a new concept whereby a municipality may permit in its zoning ordinance development rights which are severable and separately conveyable as a separate estate in land. The specific authority and procedure is provided in Section 619.1. This provision would allow a municipality to encourage development of the municipality in a manner more reasonably related to the best interests of the community while at the same time avoiding economic hardship to landowners who cannot otherwise develop their land.

"Variance." This new term refers to relief from technical requirements in the zoning ordinance which would prevent a use that is an otherwise legitimate use within a zoning district. Procedures and criteria for granting such relief are provided generally in Article VI and specifically in Article IX.

"Water survey." This new term defines the origin and extent of water resources within a municipality.

Subsection (b). This subsection is added to define words and phrases used in Article IX and Article X-A and which apply solely to those Articles.

ARTICLE II - PLANNING AGENCIES

Section 201: Creation of Planning Agencies.

This section has been amended by adding a provision to clarify who may serve as the planning agency's legal advisor. It provides that either the municipality's solicitor or an attorney appointed by the governing body shall be the legal advisor.

Section 202: Planning Commission.

Changes to this section are merely editorial.

Section 203: Appointment, Term, and Vacancy.

This section has been subdivided into subsections and has been amended to add existing provisions now found in Section 204 for filling vacancies or increasing or decreasing the number of members on the commission. The additions to this section are not a change in existing law and may be considered an editorial transfer from existing Section 204.

Section 204: Members of Existing Commissions.

This section is repealed since it contains either transitional provisions which have become obsolete with the passage of time or provisions which have been transferred to Section 203.

Section 205: Membership.

Changes to this section are merely editorial.

Section 206: Removal.

This section is amended to delete the phrase "which appointed the member" in order to be consistent with Section 203 and the definitions in Article I which distinguish between the governing body and the appointing authority in that the appointing authority may not always be the governing body.

Section 207: Conduct of Business.

This section is not amended.

Section 208: Planning Department Director.

This section is not amended.

Section 209.1: Powers and Duties of Planning Agency.

Subsection (a). This subsection sets forth the mandatory powers and duties of the planning agency. It is not amended.

Subsection (b). This subsection sets forth additional powers and duties which may be exercised at the request of the governing body. The following clauses of this subsection have been amended.

Clause (3) has been amended only editorially.

Clause (5) has been amended only editorially.

Clause (7) is revised to clarify that a capital improvements program is to be submitted to the governing body for action.

Clause (7.1) is added to require the planning agency, at the request of the governing body, to prepare a water survey consistent with the State Water Plan and any water resources plan adopted by a River Basin Commission. In the event that a water survey is required, it shall be conducted in accordance with any public water supplier in the area to be affected.

Clause (10.1) is added to clarify that the planning agency may present testimony to any board. Since the Code is currently silent on this point, it has deterred some planning agencies from performing this important function.

Clause (14) is added to call for review of municipal development ordinances, at least as often as the review of the municipal comprehensive plan, to insure that they: (1) are consistent with the changing land use and development policies of the municipality, (2) keep up with changing practices, and (3) identify needed amendments.

Subsection c. This subsection is deleted since the municipal engineer would ultimately review and comment upon any recommendation of the planning agency which is submitted to the governing body.

Section 210: Administrative and Technical Assistance.

Amendments to this section are merely editorial.

Section 211: Assistance.

This section is not amended.

ARTICLE III - COMPREHENSIVE PLAN

Section 301: Preparation of Comprehensive Plan.

(a) The proposed changes are intended to strengthen the comprehensive plan as the overall policy guide for the physical development of the municipality. The required elements of the plan presently included in the Code are minimal and should be supplemented by the proposed additions to give greater attention to housing, plan component interrelationships, and plan implementation. While these changes may appear to add more work for municipal officials and increase consultant fees, most existing comprehensive plans already include these items.

Clause (1). This clause is amended to require that the statement of objectives in the comprehensive plan specifically include consideration of location, character, and timing of future development. The amendment also is intended to encourage that the statement of objectives in the comprehensive plan may serve as a basis for, and may be used as, the statement of community development objectives required to be enacted as part of a zoning ordinance pursuant to Section 606.

Clause (2). This clause is amended to permit the plan for land use which is required by the comprehensive plan to include not only provisions for the amount, intensity, and character of various land uses, but also provisions for the timing of such uses. The clause also expands the enumeration of land use to which such provisions may be applied. These changes are proposed to emphasize that the timing of land use development is frequently as important as the amount, intensity, and character of the use; and that uses intended for utilities, community facilities, parks and recreation, and agricultural preservation are increasingly essential uses required for effective land use planning.

Clause (2.1). This new clause adds an element to the comprehensive plan to address present and future housing needs. The plan for housing may include preservation of existing sound housing, rehabilitation of housing in declining neighborhoods, and the accommodation of expected new housing in various dwelling types with various densities. This new provision is intended to encourage the consideration of a variety of housing needs for the community and its residents, including types and costs of housing.

Clause (3). This existing clause is amended to add pedestrian and bikeway systems to the items which may be considered in plans for the movement of people and goods. The amendment further clarifies that transit routes are "public" transit routes.

Clause (4). This clause is amended to make editorial changes to clarify existing items which may be considered in plans for community facilities and utilities and adds fire and police stations, flood plain management, and utility corridors and associated facilities to the list of items which may be considered.

Clause (4.1). This new clause is added to require as an element of the comprehensive plan a statement of the interrelationships among the various plan components. It is intended to encourage integration of plan objectives

and consideration of the impact which each component has upon the other so that land use decisions may reasonably and intelligently reflect the consequences of choices made in the process of community development.

Clause (4.2). This new clause is added to require as an element of the comprehensive plan a discussion of implementation strategies for the comprehensive plan. The intent of this clause is similar to the intent of Clause 4.1 in that it attempts to encourage careful thought in the formation of guidelines for the manner in which the plan's objectives are to be most effectively implemented.

Clause (5). This clause has been amended to clarify existing provisions which require consideration of the relationship of the municipality's development to surrounding municipalities and areas. The amendment requires the comprehensive plan to contain only a statement (and not a map) of the interrelationship between the existing and proposed development of a municipality and (a) existing and proposed development of contiguous municipalities; (b) county development objectives and plans; and (c) regional trends, whether sociological, economic, demographic, ecological, or otherwise. Since municipal land use planning more and more frequently adversely affects development objectives of adjacent municipalities and the surrounding region, this provision is intended to encourage consideration of adjacent and regional planning objectives and informal cooperation in land use planning.

(b) In addition to the provisions of subsection (a), the comprehensive plan may also include a survey which identifies reliable sources of water for both current and future needs. This survey must be consistent with the State Water Plan and any applicable water resource plan adopted by a River Basin Commission.

Section 301.1: Energy Conservation Plan Element.

This section is not amended.

Section 301.2: Surveys by Planning Agency.

This new Section 301.2 contains the general provisions from existing Section 301(5) requiring the utilization of surveys and studies in the preparation of a comprehensive plan and specifically enumerates the surveys and studies necessary to prepare the comprehensive plan.

Section 301.3: Submission of Plan to County Planning Agency.

This new Section 301.3 requires the review of a proposed comprehensive plan or plan amendment by the county planning agency, contiguous municipalities and the coterminous school district prior to the public hearing required of the governing body pursuant to Section 302. County-level review is consistent with other sections of the Code; review by contiguous municipalities and the school district is new and is intended to provide the municipal planning agency and the governing body with the views of those agencies and government units that would be both directly and indirectly affected by the plan's policies. Identification and anticipated resolution of potential intergovernmental disputes is one important benefit of this approach.

As a general concept, the external review period for the official map and map amendments, the comprehensive plan and plan amendments, zoning ordinance, and subdivision and land development ordinances is standardized at 45 days. External review of subdivision plans, zoning ordinance amendments, and subdivision and land development ordinance amendments is standardized with a 30-day review period.

Section 301.4: Compliance by Municipalities.

This subsection presumes that comprehensive plans adopted after the effective date will comply with provisions of the act.

This new subsection addresses three separate types of circumstances related to the adoption of a comprehensive plan by a municipality prior to the effective date of this amendatory act. Under all of the following, a municipality must review the existing plan within one year of the effective date and:

(1) if the plan is consistent with this act, adopt a resolution to that effect;

(2) if the plan is inconsistent with this act, adopt comprehensive amendments within five years of effective date; and,

(3) if no plan exists, adopt a comprehensive plan within five years of effective date.

Section 302: Adoption of Comprehensive Plan and Plan Amendments.

This section is expanded to include a more detailed procedure for adopting the comprehensive plan and any plan amendments. It is divided into subsections to facilitate easier reading. A public meeting by the planning agency and a public hearing by the governing body are the minimum prerequisites prior to adoption of the plan or plan amendment. The public meeting by the planning agency, instead of a hearing, is intended to provide a less formal atmosphere and to avoid the costs associated with a public hearing.

Subsection (a). This subsection details the requirements for public meetings and the review of the comprehensive plan or plan amendment by the county, contiguous municipalities, and the coterminous school district. The comments of the other political subdivisions, the public meeting comments, and the planning agency's recommendations are required to be considered by the governing body as it reviews the comprehensive plan or plan amendment. This proposal is intended to strengthen the external review process required in Section 301.3.

Subsection (b). This new subsection requires the governing body to conduct at least one public hearing on the comprehensive plan or plan amendment. A second hearing is required if a plan or amendment is substantially revised subsequent to this public hearing. These public hearings will insure that the public has a full opportunity to react to the proposed plan or amendment prior to its adoption.

Section 303: Legal Status of Comprehensive Plan Within the Jurisdiction that Adopted the Plan.

This section is divided into subsections to facilitate reading.

Subsection (a). This subsection is amended to require municipal agencies, authorities, and departments, in addition to the governing body as required by the existing Code, to submit to the municipal planning agency for recommendations any action proposed to be taken subsequent to the adoption of a comprehensive plan which relates to enumerated public improvement activities and land use regulation set forth in clauses (1) through (4).

Clause (1). This clause is editorially amended.

Clause (2). This clause is editorially amended.

Clause (3). In this clause reference is made to planned residential development provisions, rather than ordinance, to reflect the changes proposed in Article VII which would require all PRD provisions to be included in a zoning ordinance. Reference to a capital improvements program is added to reflect the importance of the comprehensive plan in terms of planning long-range capital facility needs of the community.

Clause 4. This new clause specifically requires the submission for review by the planning agency of sewer and water facilities which have important implications for growth and development in a municipality.

Subsection (b). The provisions of this subsection have been amended to require the planning agency to specifically relate the proposed action to the stated objectives of the comprehensive plan, rather than a general and less specific intent. Also, the planning agency's time period for reviewing the various actions is extended to 45 days from 30 days to reflect the additional coordination time that would likely be necessary to perform the review.

Subsection (c). Adopted by amendment in the Senate Local Government, this subsection has been added to clearly indicate that the failure of a municipal governing body to strictly comply with all provisions of its comprehensive plan in the adoption, implementation, or adjudication of its subdivision, land development, zoning, or related ordinances shall not subject the municipality to challenge or appeal on that basis alone.

Section 304: Legal Status of County Comprehensive Plans Within Municipalities.

This amended section provides for review of municipal actions when the municipality is within a county that has an adopted comprehensive plan or plan element. As in Section 303, the municipal agencies, departments, and authorities, as well as the governing body, are required to submit proposed enumerated public improvement activities and land use regulation to the county planning agency for review and recommendation. In addition, this section was editorially divided into subsections.

Section 305: The Legal Status of Comprehensive Plans Within School Districts.

This section includes editorial changes and clarifies the requirement that school district review applies to public school districts only. Leasing of school district structures or land is added as a proposed action that is subject to applicable planning agency review. The time for planning agency review is extended to 45 days from 30 days.

Section 306: Municipal and County Comprehensive Plans.

The general term "municipality" is used, as explained in Article II. In addition, a requirement to furnish a copy of the adopted plan or amendment to the county planning agency or the governing body of the county, if no county planning agency exists, is added.

Subsection (a). This subsection is editorially amended.

Subsection (b). This subsection is added to require the governing body of a municipality to forward a certified copy of a comprehensive plan or amendment thereto to the county within 30 days after adoption.

ARTICLE IV - OFFICIAL MAP

Section 401: Grant of Power.

The changes proposed in this section and thoughout this Article are intended to increase the use of the official map as an important plan implementation tool in the Commonwealth. Aside from the provision that encourages an official map to be based upon an adopted comprehensive plan or plan element relating to public lands and facilities, the primary change would specifically clarify that a municipality may prepare an official map for only a portion of the community. Partial mapping is expected to reduce the costs of mapping and thereby foster its use as a local option land use planning technique. While these proposals may not result in fully engineered, municipality-wide official maps, the wide acceptance of this plan implementation technique by municipalities would be far better than the present sporadic use of mapping.

Subsection (a). Clauses (1) through (6) of subsection (a) clarify the variety of public lands and facilities that may be included on an official map, and expand the types of surveys that may be used to prepare the official map.

Subsection (b). This subsection authorizes the governing body to use techniques such as property records, aerial photography, photogrammetic mapping, or other methods sufficient for identification, description, and publication of maps, as well as precise engineering surveys, for the regulatory purposes of this article. However, whenever lands and easements are to be acquired, boundary descriptions by metes and bounds shall be made and sealed by a licensed surveyor.

Section 402: Adoption of the Official Map and Amendments.

Subsection (a). The changes in this subsection clarify the required review of the proposed official map and accompanying ordinance by the planning agency and other bodies and expand the review period by five days (to 45 days) to be consistent with other ordinance review periods proposed in the Code. The governing body cannot act upon the proposed official map or amendments until it receives the recommendation of the planning agency or until the expiration at 45 days after referral of the map or amendment to the planning agency.

Subsection (b). This subsection cross-references Section 408, relating to notice to other municipalities of a proposed official map or amendment. Also, this subsection enumerates various public bodies which the governing body or planning agency may request to offer comments and recommendations.

Subsection (c). This new subsection requires the recording of the adopted official map and ordinance to insure adequate public and legal notice of the official map and its effects on local property owners. It is anticipated that minimal additional costs to local governments would be required to implement this recording mandate.

Section 403: Effect of Approved Plats on Official Map.

This section is amended editorially and cross-references the changes proposed in Section 401.

Section 404: Effect of Official Map on Mapped Streets, Watercourses and Public Grounds.

This section is amended to reflect editorial changes and the broader scope of this section's title to include both streets and public lands.

Section 405: Buildings in Mapped Streets, Watercourses or Other Public Grounds.

The title of this section is broadened to encompass elements of a comprehensive plan which may be reflected in the official map as provided in Section 401. The term "special encroachment" is added to describe a permit to build within the lines of any street, watercourse, etc., to distinguish this permit from a building and zoning permit.

Section 406: Time Limitations on Reservations for Future Taking.

This section is not amended.

NOTE: The Task Force had originally proposed to amend this section by extending the time period for reservation of public grounds from one to two years. However, in light of two recent United States Supreme Court decisions related to uncompensated "takings" of private land for public use in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution, the original language has been left intact. For further information on these cases and their implications, see Local Government Commission publication of October, 1987, "Analysis of Supreme Court Decisions." First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, California, 107 S.Ct. 2378, 96 L.Ed. 2d 250, 55 U.S.L.W. 4781 (1987); Nollan v. California Coastal Commission, 107 S.Ct. 3141, 97 L.Ed. 2d 677, 55 U.S.L.W. 5145 (1987).

Section 407: Release of Damage Claims or Compensation.

This section is not amended.

Section 408: Notice to Other Municipalities.

The general term "municipality" is substituted in several places in this section, and the review period by the county planning agency is clarified, consistent with other sections of the Code.

The major changes in this section would require (1) review of an official map or amendment thereto by adjacent municipalities wherever the map shows not only streets but also public lands intended to lead into an adjacent

municipality, and (2) the furnishing of a certified copy of any adopted official map or amendment thereto to the county and to any adjacent municipality into which streets and public lands lead. These provisions would help to insure consistency and full knowledge about the proposals in each jurisdiction. The review period for adjacent municipalities is consistent with that for the county and local planning agencies.

ARTICLE V - SUBDIVISION AND LAND DEVELOPMENT

Section 501: Grant of Power.

The major change in this section is the mandatory submission to the governing body or designated planning agency of all subdivision and land development plats that fall within the definitions in Article I whenever a municipality enacts a subdivision and land development ordinance. The reference to a planned residential development "ordinance" is also editorially amended to read planned residential development "provisions" to conform to changes made to Article VII.

Section 502: Jurisdiction of County Planning Agencies.

This section is divided to facilitate reading and the general terms "municipality" and "municipalities" are used consistent with other sections of the Code.

Subsection (a). This subsection is editorially amended.

Subsection (b). In this subsection the time period for review of subdivision and land development applications by county planning agencies is reduced to 30 days from 45 days to expedite the plat approval process.

Subsection (c). This subsection provides that the county planning agency must concur when a municipality wishes to designate the county planning agency as its official administrative agency for review and approval of plats after adopting, by reference, the subdivision and land development ordinance of the county.

Section 503: Contents of Subdivision and Land Development Ordinance.

This section sets forth various provisions which may be included in a subdivision and land development ordinance.

Clause (1). This clause is amended to specifically give municipalities authority to charge fees for review of subdivision and land development plans and to require certification of the accuracy of plats. Review fees, based upon a schedule established by ordinance or resolution, are defined as those reasonable and necessary charges required by a municipality to compensate its professional consultants or engineers for services rendered in the review process; however, fees shall not exceed actual charges of these consultants and engineers. This clause also provides for an arbitration-type process by which applicants who dispute these fees may resolve this matter in accordance with the procedure set forth in Section 510(g).

Clause (1.1). This new clause is added to permit a local option for waiver of the broader definition of land development provided in Section 107 to avoid potential hardships on those attempting to convert existing single family dwellings into three or fewer residential units (excluding condominiums) or to construct accessory buildings, including farm buildings.

Clause (2). This clause is not amended.

Clause (3). This clause is amended to add a cross-reference to Section 509 to reflect the more detailed provisions in that section relating to completion of improvements and guarantees.

Clause (4). This clause is amended to add language to clarify that any land development which is not immediate may be excused from requirements for installation of improvements as a condition for final plat approval.

Clause (4.1). This new clause is added to assist municipalities that have adopted a subdivision and land development ordinance but have chosen not to enact a zoning ordinance. Under this new provision a municipality may provide for minimum lot sizes and setbacks in its subdivision and land development ordinance if they are based on the availability of water and sewage.

Clause (5). This clause is amended to clarify that either the governing body or the planning agency (if authorized in the ordinance) may administer the ordinance and permit alterations in the site requirements.

Clause (6). This clause is not amended.

Clause (7). This new clause is added to encourage coordination with adjacent municipalities and other levels of government which are affected by land development plans by authorizing solicitation of reviews and reports from these municipalities and other governmental agencies.

Clause (8). This new clause is added to permit a municipality to grant waivers or modifications to minimum standards in a land development ordinance when literal compliance would be unreasonable, cause undue hardship, or when an alternative standard can be shown to provide equal or better results. The procedure for granting such waivers in Section 512.1 is cross-referenced.

Clause (9). This new clause is proposed to clarify that a municipality may impose conditions for the approval of plats whether preliminary or final. It also provides that the municipality establish a procedure for an applicant's acceptance or rejection of conditions.

It is intended that this amendment clarify the authority of a municipality to impose prerequisites for subdivision and land development approvals but equitably give a developer an opportunity to notify the municipality of either the rejection or acceptance of the conditions. It is anticipated that a developer's rejection of the conditions will be deemed a disapproval of the application for which the municipality must render a written decision pursuant to Section 508(1) and Section 508(2) in accordance with the holding in Board of Commissioners of Annville Township v. Livengood, 44 Pa. Commonwealth 336, 403 A2d 1055, (1979).

Clause (10). This new clause insures that developments include provisions for reliable, safe, and adequate water supply.

Section 503.1: Water Supply.

This subsection was added by amendment in the Senate Local Government Committee at the request of the Public Utility Commission (PUC). The intent is to insure that every owner of a lot within a subdivision or development shall have access to available water supply by requiring an applicant to present evidence in the form of a PUC Certificate of Public Convenience, an application therefor, an agreement to provide water service from a bona fide cooperative association of lot owners, or a written agreement from a municipal authority or utility that such a water supply is available. If water is supplied by private wells owned and maintained by lot owners, this subsection becomes inapplicable.

Section 504: Enactment of Subdivision and Land Development Ordinance.

Subsection (a). This subsection is amended to increase the time period from 40 to 45 days which the governing body must allow the local planning agency for reviews unless the local planning agency prepared the ordinance. A new provision is also added to require a municipality to submit the ordinance to the county planning agency, if one exists, at least 45 days prior to the public hearing on the ordinance. These provisions are intended to insure that expertise in planning and land use is consulted for the most viable subdivision and land development regulations. The requirements of these new provisions are similar to those in Articles III, IV, and VI.

Subsection (b). This new subsection is added to require the filing of all subdivision and land development ordinances with the county planning agency, or the governing body of the county if no such agency exists, within 30 days after adoption. This mandate is intended to insure that the county has true and accurate information on local subdivision and land development for countywide planning purposes.

Section 505: Enactment of Subdivision and Land Development Ordinance Amendments.

This section is amended to add provisions identical to the amendments to Section 504. However, this section applies to "amendments" of ordinances and sets the review period at no less than 30 days.

Section 506: Content of Public Notice, Availability and Advertisement of Ordinances.

The existing language in Section 506 is deleted. New language is substituted to provide procedures for enacting ordinances and amendments similar to those in the various municipal codes. Reference should be made to Section 506 of the bill for details of the procedure.

Section 507: Effect of Subdivision and Land Development Ordinance.

This section is not amended.

Section 508: Approval of Plats.

This section sets forth procedural requirements for the approval of plats.

Clause (1). This clause was not amended.

Clause (2). This clause was not amended.

Clause (3). This clause was not amended.

Clause (4). This cumbersome clause is divided to facilitate reading.

Subclause (i) contains no amendments.

Subclause (ii) is amended to clarify its meaning, operation, and applicability in light of the decision of the court in Board of Commissioners of Annville Township v. Livengood, 44 Pa. Commonwealth 336, 403 A2d 1055, (1979). Its provisions prohibit a municipality from amending zoning, subdivision, or other governing ordinances or plans which impose different requirements or conditions subsequent to either the unconditional or conditional approval of an application for development. In Livengood the court relied upon Section 508(4) as an implied statutory basis for a municipality's authority to impose conditions upon a subdivision and land development plan approval. Since it does appear that no expressed authority exists in the Code for such prerequisites, a provision has been added to Section 503 to permit municipalities to establish, by ordinance, conditions for approval of subdivision and land development applications. This is consistent with the decision in Livengood. Section 508(4)(ii) now addresses exclusively the issue of whether changes or amendments to local land use ordinances or plans may be applied to affect adversely the rights of an applicant who has acted and relied upon ordinances or plans in existance at the time of approval. The approval can be either unconditional or subject to conditions which may have been imposed pursuant to an ordinance enacted under the authority of Section 503(10). If the approval is unconditional, this section prohibits the imposition of conditions by subsequent changes to local ordinances or plans; if the approval is conditional, and conditions were accepted by the applicant, this section prohibits the imposition of additional conditions by subsequent changes to land use ordinances or plans. These provisions and prohibitions are an attempt to insure that an applicant is given the greatest opportunity to rely upon the due process procedures to which he in good faith originally submitted his property interests.

Subclauses (iii), (iv), (v), (vi), and (vii), are not amended.

Clause (5) is not amended.

Clause (6) is not amended.

Clause (7). This new clause cross-references the mediation option proposed in Section 908 of the Code. This voluntary option is intended to assist the resolution of controversies over the approval or disapproval of an application for plat approvals without resorting to litigation.

Section 509: Completion of Improvements or Guarantee Thereof.

This cumbersome section is divided with subsections to facilitate reading.

Subsection (a). This subsection is amended to clarify the authority of a municipality to require either actual completion of improvements or a posting of financial security in lieu thereof as guarantee for completion of improvements before it grants final plat approval.

Subsection (b). This new subsection is added to enable a developer to receive financing approval from a financial institution prior to actually receiving final plan approval from the governing body. The governing body or planning agency, if authorized, shall provide the developer with a resolution indicating approval of the final plat contingent upon the developer receiving satisfactory financial security within 90 days. This section is intended to avoid a standoff situation in which a governing body will not grant final plan approval until the developer obtains financial security, and the financial institution will not approve the security until the developer obtains final plan approval.

Subsection (c) and (d). These subsections are not amended.

Subsection (e). This subsection is amended to require that the date for completion of improvements be fixed either in the formal action of approval of the plan or in an accompanying agreement for completion of the improvements.

Subsection (f). This subsection is amended to require that financial security is equivalent to 110 percent of the cost of completion. The cost of completion shall be estimated as of 90 days following the date scheduled for completion of improvements. This amendment is intended to assure that the cost estimate reflects anticipated cost increases which may occur between the time of the submission of the proposal and the time when the municipality may be required to complete the improvements.

This subsection is also amended to permit a municipality to monitor and, if necessary, adjust the amount of financial security during the term established for the completion of improvements or to review and, if necessary, adjust the amount of financial security in cases where improvements cannot be completed by the scheduled date of completion.

Subsection (g). This new subsection provides a methodology by which an applicant or developer and the municipality can reach an accord on the amount of financial security to be posted. It provides for the following procedure in this regard:

(1) on behalf of the applicant, a licensed professional engineer (P.E.) shall prepare and submit a fair and reasonable estimate of costs of completion of required improvements;

(2) in the event the municipal engineer, for good cause shown, shall recommend that the estimate be refused, the applicant and municipality shall mutually agree upon a third P.E. to re-estimate these costs; and,

(3) the estimate of the third P.E. shall be presumed to be a fair and reasonable final estimate to be adopted by both applicant and municipality each of which shall pay one-half of the fees owed the third P.E.

Subsection (h), (i), (j), (k), (l), and (m). These subsections are not amended.

Section 510: Release from Improvement Bond.

Subsection (a). This subsection is not amended.

Subsection (b). A fifteen-day time period has been added in subsection (b), within which the municipal governing body is required to notify a developer of the result of the municipal engineer's inspection of improvements and the municipal governing body's decision regarding release from the improvement bond.

Subsection (c), (d), (e), and (f). These subsections are not amended.

Subsection (g). This new subsection is added to provide for reimbursement by an applicant to a municipality for the reasonable and necessary expenses incurred in the inspection of improvements. These expenses, based upon a schedule established by ordinance or resolution, shall not exceed the actual fees charged by an engineer or consultant. This subsection also provides a methodology by which disputes over the amount of these expenses can be resolved. In this artibration-like process, the applicant and municipality unable to agree on the precise amount, shall jointly appoint another professional engineer to hear evidence and render a decision on the amount to be paid. If the applicant and the municipality cannot agree upon an engineer, the court of common pleas shall make the appointment. The fee of the professional engineer who finally does render a decision shall be paid by the applicant, the municipality, or equally shared by both depending upon specific factors set forth in this subsection.

[NOTE: Earlier provisions of this subsection had authorized the municipality to require up to 50 percent reimbursement of these costs.]

Section 511: Remedies to Effect Completion of Improvements.

This section is not amended.

Section 512.1: Modifications.

This new section is added to permit a governing body or planning agency (if authorized) to grant a modification of the requirements of a subdivision and land development ordinance upon application for relief for undue hardship resulting from literal compliance.

Subsection (a). This subsection provides that the governing body or planning agency may grant a modification of the ordinance requirements if literal enforcement will cause undue hardship due to peculiar conditions of the land in question and if the modification will not be contrary to the public interest and the purpose and intent of the ordinance is preserved.

Subsection (b). This subsection sets forth the elements which must be included in a request for a modification. It requires that the request for modification be in writing and be included as part of the application for development and include the facts of hardship, the provision or provisions of the ordinance involved, and the minimum modification necessary for relief.

Subsection (c). This subsection permits the governing body to refer the request for modification to the planning agency for advisory comments if approval authority rests with the governing body.

Subsection (d). This subsection requires the approving body, either the governing body or the planning agency, to keep a written record of all action on requests for modifications.

Section 513: Recording Plats and Deeds.

The title of this section is amended to provide for the recording of deeds when applicable.

Subsection (a). This subsection is amended to further provide for procedures for recording approved subdivision or land development plats by adding a requirement that the plats include a certification by the county planning agency, if one exists, that the plat was reviewed by the county planning agency in accordance with the requirements of Section 502.

Subsection (b). This subsection was not amended.

Section 513.1: Approval Not Required For Certain Subdivisions.

Added by amendment on third consideration in the Senate, this new section states that despite the provisions of Section 507 (although this section should probably reference Section 508), once a deed to land located within a subdivision is duly recorded, and the municipality fails to commence an action for ordinance violation within three years of the recording date of the deed, no approval shall be required for the subdivision, nor shall the preparation or recording of a plat be required. This section would become effective immediately and would be retroactive to January 1, 1968.

Section 514: Effect of Plat Approval on Official Map.

This section is not amended.

Section 515: Penalties.

This section is repealed.

Section 515.1: Enforcement Remedies.

This new section clarifies that municipalities have remedies available in addition to those provided in Section 515.2 (re: civil enforcement proceedings).

Subsection (a). This subsection provides that a municipality may also institute actions by law or in equity to restrain, correct, or abate violations and prevent unlawful construction or occupancy and to recover damages. Language to provide that a description by metes and bounds in an instrument of transfer or sale shall not exempt the seller or transferor from penalties or liability for remedies, that was removed with the deletion of Section 515, is reinserted in Subsection 515.1(a).

Subsection (b). This subsection permits a municipality to refuse to issue any permit or grant any approval to develop land which has been developed or subdivided in violation of an ordinance and adopted pursuant to Article V. This authority is applicable whether the applicant is an owner, vendee, or lessee at the time of the violation or subsequent to the time of the violation and whether the applicant had either actual or constructive notice of the violation. However, the municipality may decide to issue a permit or grant approval for development contingent upon satisfaction of the conditions that would have been applicable to the property at the time an applicant acquired his interest in the property.

Section 515.2: Enforcement Penalties.

This new section is proposed to provide for "enforcement penalties" for violations of the subdivision and land development ordinance.

Subsection (a). The major proposed change would eliminate the criminal penalty for subdivision and land development ordinance violations and substitute a civil penalty. This change is deemed to be more in keeping with the nature of such violations and the reality that criminal prosecutions for violations of municipal ordinance are far from commonplace. Liability for a violation shall result in a civil fine of $500 plus costs of prosecution and attorney's fees incurred by the municipality, but no violation shall be deemed to have occurred nor any fine commenced, imposed, or paid until a final determination is made. In addition, a district justice shall have authority to issue an order requiring a defendent to remedy a violation. In case of a default of payment of the fine or failure to comply with the order of the District Justice, the municipality may petition the Court of Common Pleas for a contempt citation. Each day the violation continues shall constitute a separate violation, unless it is determined that a good faith basis existed for the violation in which case there shall be deemed only one violation until the 5th day following the violation; thereafter, each day shall constitute a separate violation.

Subsection (b). This subsection authorizes the Court of Common Pleas to grant a stay tolling the per diem fine upon petition and cause shown pending final adjudication. All fines for violations shall be paid over to the municipality whose ordinance has been violated.

Subsection (c). This subsection declares that the municipality has the exclusive right to commence an action for enforcement pursuant to this section.

ARTICLE VI - ZONING

Section 601: General Powers.

This section is not amended.

Section 602: County Powers.

This section is editorially amended to provide for the use of the general terms "municipality" and "municipalities" for consistency with other sections of the Code.

Section 603: Ordinance Provisions.

Subsection (a). This subsection is an introductory statement emphasizing that zoning ordinances should reflect the policy goals of the statement of community development objectives required in §606. Similar to §303(1), this subsection clearly states that a municipality which fails to strictly comply with provisions of its comprehensive plan in adopting, implementing, or adjudicating zoning ordinances will not be subject to challenge or appeal on that basis.

Subsection (b). This subsection contains editorial amendments to provisions currently in subsection (a) which set forth the authorized regulatory powers that a zoning ordinance may contain. Compliance with its provisions remains voluntary.

Clause (1), (2), (3), and (4). These clauses are not amended.

Clause (5). This clause is relocated from existing subsection (b), clause (5) to highlight the importance of preserving natural resources and agricultural land and activities.

Subsection (c). This subsection is primarily a renumbered subsection (b) with editorial amendments and other amendments. Compliance with its provision remains voluntary. It authorizes additional zoning functions which may be included in the zoning ordinance.

Clause (1). This clause is editorially amended.

Clause (2). This clause is amended to require the governing body to conduct a hearing, pursuant to public notice, on the application for a conditional use and to enable the governing body to attach conditions to the approval of a conditional use, similar to the zoning hearing board's ability to attach conditions to a special exception.

Clause (2.1). This clause is amended to clarify the status of applications for special exceptions and conditional uses pending on the date of the enactment of an amendment to the zoning ordinance.

Clause (2.2). This new clause enables municipalities to implement the "transferable development rights" (TDR) concept through zoning. This optional and voluntary system is proposed because of the probable negative legal consequences that a mandatory system would have in Pennsylvania. Inclusion of this innovative plan implementation technique in the Code may encourage municipalities to try this new technique. Additional TDR provisions are proposed in Sections 605 and 619.

Clause (3) and (4). These clauses are editorially amended.

Clause (5). This clause is amended to provide general language to encourage use of innovative zoning techniques to promote development.

Clause (6). This new clause is added to permit provisions in the zoning ordinance which authorize increases in permissible density of population or intensity of use based upon expressed standards and criteria set forth in the ordinance. This provision allows a municipality to review density and use restrictions to accommodate unforeseen growth in population and/or nonresidential uses and demands.

Subsection (d). This new subsection is added so that zoning ordinances may include provisions regulating siting, density, and design of developments to assure reliable, safe, and adequate water supplies to support the intended use of the land.

Section 603.1: Interpretation of Ordinance Provisions.

This new section is added to provide a statement of intent to assist in the interpretation of zoning provisions where the meaning of statutory language adopted by a governing body is questioned. Where doubt exists as to the intention of the governing body, the language shall be interpreted in favor of the property owner and against any implied extension of the restriction. This is a principle which is embodied in case law.

Section 604: Zoning Purposes.

Clause (1). This clause is amended to include more specific reference to natural features preservation, recreation, solar access, and historic preservation in order to reflect the importance of using zoning techniques to protect these resources. The term "emergency management" is used to reflect a broader scope of activities than "civil defense." Language is added to include a provision for safe, reliable, and adequate water supply as a purpose of zoning. Editorial changes also reflect an intent that municipalities consider using more than one of the techniques in their zoning ordinance.

Clause (2). This clause is amended to delete a sentence which requires that zoning ordinances be made in accordance with an overall program and consideration of the character of the municipality. Similar language is now included in Section 603(a) by reference to a statement of community objectives.

Clause (3). This clause is not amended.

Clause (4). This clause is added to emphasize the importance of providing for varied types of housing through zoning. The clause enumerates several types of single and multi-family dwellings and provides that no zoning ordinance shall be declared invalid for not listing other classifications of dwellings.

Clause (5). This clause is added to reflect an intent to foster inclusionary rather than exclusionary zoning ordinances by providing as a zoning purpose the accommodation of population and employment growth and the development of a variety of residential and nonresidential uses.

Section 605: Classifications.

This section continues to require that a municipality (other than a county which enacts a zoning ordinance) may not leave any portion of the municipality unzoned. The section is amended to further provide for additional elements and criteria for zoning classifications.

Clause (1). This clause is not amended.

Clause (2). This clause is amended to specify additional items that may be accommodated through special treatment in zoning ordinances. These include: rail or transit terminals, boat docks and related facilities, places of architectural interest or value, and agricultural areas and landfills.

Clause (3). This clause is added to permit special treatment for the innovative and flexible development techniques included in Sections 603(5) and 603(6).

Clause (4). This clause is added to permit special treatement for TDR provisions, which are added in Section 603(c)(2.2).

Section 606: Statement of Community Development Objectives.

This section is amended to emphasize the "policy goals" of the municipality as set forth in the statement of community development objectives. In the recognition that new policy goals may be developed and that new zoning regulations consistent with these goals may be adopted, neither of these occurrences may require a new comprehensive plan or community development objectives. The statement may be either the comprehensive plan or a statement of legislative findings. The contents of the alternative statement by legislative findings are also amended to provide additional guidance to governing bodies desiring to prepare such a statement. The last

sentence of this section is deleted since it no longer has meaning, given the passage of time.

Section 607: Preparation of the Proposed Zoning Ordinance.

This section is subdivided to facilitate reading and the general term "municipality" is used to be consistent with other sections of the Code.

Subsection (a). This subsection is amended to re-emphasize that the zoning ordinance shall be prepared by the local planning agency, if requested by the governing body, and should be substantially consistent with the statement of community development objectives.

Subsection (b). This subsection requires the planning agency to hold one or more public meetings, rather than hearings, during preparation of the zoning ordinance. This would avoid the need to have a stenographic record and formal notice, while still providing the public an opportunity to comment on the proposed ordinance.

Subsection (c) and (d). These subsections are not amended.

Subsection (e). This subsection is amended to increase the period for review of an ordinance by a county planning agency from at least 30 days to at least 45 days prior to the public hearing conducted by the local governing body. The existing Code prohibits submission of the proposed zoning ordinance to the local governing body for action prior to review by the county planning agency. The amendment to this subsection would permit the local planning agency to submit the proposed ordinance to either (1) the local governing body and the county planning agency simultaneously, or (2) to the local governing body first and then to the county planning agency, or (3) to the county planning agency first and then to the local governing body. However, the local governing body may not conduct a public hearing on the proposed zoning ordinance unless the county planning agency has been given 45 days prior to the public hearing to review and comment on the proposed ordinance.

Section 608: Enactment of Zoning Ordinance.

This section is amended to require the governing body to vote on enactment within 90 days after the last public hearing in the event of multiple hearings. Also, a copy of the zoning ordinance is to be forwarded to the county planning agency or county governing body within 30 days after enactment. This is similar to the requirement proposed in Articles III, IV and V.

Section 609: Enactment of Zoning Ordinance Amendments.

This section sets forth the procedures for enactment of amendments to zoning ordinances and is subdivided to facilitate reading.

Subsection (a). This subsection is amended to cross-reference Section 607 as optional procedures for enacement of zoning ordinance amendments. A

requirement is also added to require that every amendment to the zoning ordinance be substantially consistent with the statement of community development objectives to emphasize its importance.

Subsection (b). This subsection is amended to require that notice of proposed amendments to a zoning map be conspicuously posted at points along the tract of land affected at least one week prior to the date of the public hearing on the proposed amendment.

Subsection (c). This subsection is not amended.

Subsection (d). This subsection is editorially amended.

Subsection (e). This subsection is editorially amended.

Subsection (f). This new subsection references the mediation option proposed in Section 908.1 of the Code. This voluntary option is intended to assist the resolution of controversies over the approval or disapproval of zoning applications without resorting to litigation. However, Section 908.1 prohibits the zoning hearing board from initiating mediation or participating as a mediating party.

Subsection (g). This subsection is added to require that a copy of an amendment be forwarded to the county planning agency or county governing body. This is similar to the requirement in Section 608 for zoning ordinances and other Articles in the Code.

Section 609.1: Procedure for Landowner Curative Amendments.

The title of this section is amended to clarify that the provisions in this section apply to curative amendments filed by landowners. The section is subdivided to facilitate reading.

Subsection (a). This subsection is editorially amended.

Subsection (b). This subsection is amended to add a provision to prohibit a court from ruling an entire zoning ordinance invalid if a landowner brings a successful curative amendment challenge, but the court is empowered to invalidate only the provisions which relate to the curative amendment challenge.

Section 609.2: Procedure for Municipal Curative Amendments.

Several editorial changes are proposed in the section. The major change provides that the procedures are mandatory, if a municipality determines that its zoning ordinance is substantively invalid.

Section 610: Publication, Advertisement and Availability of Ordinances.

This section is amended to combine and replace existing Section 610 and Section 611. This procedure for enacting zoning ordinances or amendments thereto is similar to those procedures required by the municipal codes for

enactment of ordinances. Reference should be made to Section 610 of the bill for details of the procedure.

Section 611: Publication After Enactment.

This section is repealed.

Section 613: Registration of Nonconforming Uses, Structures, and Lots.

The title and the section are amended to expand its application to nonconforming structures and lots. Provisions in zoning ordinances for identification and registration of nonconforming uses, structures, and lots are no longer mandatory. However, if such provisions are included in the zoning ordinance, the zoning officer is then required to specify why a use, structure, or lot is nonconforming in order to avoid arbitrary determinations.

Section 614: Appointment and Powers of Zoning Officers.

This section is amended to prohibit zoning officers from holding an elective position in order to avoid conflicts of interest and procedural problems. Provisions are added to authorize initiation of civil enforcement proceedings by the zoning officer to assist in the enforcement of the zoning ordinance. The Task Force recommended that all zoning officers receive adequate training in their role and responsibilities, as well as the fundamentals of zoning. However, an amendment is added to this section to provide that a zoning officer shall meet the qualifications established by the municipality and be able to demonstrate to the satisfaction of the municipality a working knowledge of municipal zoning.

Section 615: Zoning Appeals.

This section is not amended.

Section 616: Enforcement Penalties.

This section is repealed and replaced by new Section 617.1.

Section 616.1: Enforcement Notice.

This new section enumerates the contents of the enforcement notice where a violation of the zoning ordinance is detected. The detailed contents of the notice would serve to protect the landowner and also encourage enforcement. The enforcement notice shall include: (1) the name of the owner of record and any other person against whom action is intended; (2) location of the property in violation; (3) the specific violation, a description of the requirements which have not been met, and citation of applicable provisions of the ordinance; (4) the specific time for compliance; (5) notice of the recipient's right to appeal to the zoning hearing board and the time period for appeal;

and (6) notice that failure to comply or failure to appeal will result in clearly described sanctions.

Section 617: Enforcement Remedies.

This section is amended by adding new provisions to include landscaping violations and authorization for an owner or tenant to institute an action in court upon proof of being substantially affected by stated land uses which are violative of the applicable ordinance. Action may be started by anyone other than the municipality only if the municipality is given 30 days prior notice, thereby ensuring that the municipality is fully aware of any actions brought by citizens. The requirement that such actions be brought in the name of the municipality is deleted to avoid municipal involvement in actions with which the municipality may not agree.

Section 617.1: Enforcement Penalties.

This new section contains amended provisions from Section 616 which is repealed. It provides for "enforcement penalties" for violations of the zoning ordinance.

Subsection (a). The major change in this subsection eliminates the criminal offense for zoning ordinance violations and substitutes a civil penalty. This change is deemed to be more in keeping with the nature of such violations and the reality that criminal prosecutions for violations of municipal ordinances are far from commonplace. Liability for violation shall result in a civil fine of $500 plus costs of prosecution and attorney's fees incurred by the municipality, but no violation shall be deemed to have occurred nor any fine commenced, imposed, or paid until a final determination is made. In addition, a district justice shall have authority to issue an order requiring a defendent to remedy a violation. In case of a default of payment of the fine or failure to comply with the order of the District Justice, the municipality may petition the Court of Common Pleas for a contempt citation. Each day the violation continues shall constitute a separate violation, unless it is determined that a good faith basis existed for the violation in which case there shall be deemed only one violation until the fifth day following the violation; thereafter each day shall constitute a separate violation.

Subsection (b). This subsection authorizes the Court of Common Pleas to grant a stay tolling the per diem fine upon petition and cause shown pending final adjudication. All fines for violations shall be paid over to the municipality whose ordinance has been violated.

Subsection (c). This subsection declares that the municipality has the exclusive right to commence an action for enforcement pursuant to this section.

Section 617.2: Finances and Expenditures.

This new section replaces Section 618 (Finance) which is repealed.

Subsection (a). This subsection continues the authorization for the governing body to appropriate funds to finance the preparation of zoning ordinances but now mandates that funds be appropriated for the administration, enforcement, and costs and expenses of appeals to court, including legal fees.

Subsection (b). This subsection specifically requires the governing body to make a provision in its budget and appropriate funds for the operation of the zoning hearing board.

Subsection (c). This subsection expands the authorization in Section 907 (Expenditures for Services) to clearly provide that the zoning hearing board may retain and fix the compensation of legal counsel, other than the municipal solicitor, as the need arises. The board may also employ, contract, and otherwise fix the compensation for experts, staff, and other services as it deems necessary. However, the expenditures cannot exceed the amount appropriated by the governing body.

Subsection (d). This subsection contains language from existing Section 618 permitting the governing body to accept gifts and grants of money and services from private sources and the county, state and federal governments.

Subsection (e). This subsection expands current provisions authorizing the governing body to prescribe reasonable fees for the administration of a zoning ordinance and expenses for hearings before the zoning hearing board. Eligible expenses for which fees may be charged include compensation for the secretary and board members, notice and advertising costs, and necessary administrative overhead costs connected with the hearing. Expenses for which fees may not be charged are the legal expenses of the board, expenses for architectural, engineering and other technical consultants, or the costs of other expert witnesses. The cost apportionment for the stenographer and hearing transcripts is provided in Section 908(7).

Section 618: Finances.

This section is repealed and replaced with Section 617.2, Finances and Expenditures.

Section 619: Exemptions.

Added at request of the Pennsylvania Public Utility Commission, this section is amended to specify the responsibilities of the Public Utility Commission (PUC) in the event that a public utility corporation petitions the PUC to conduct public hearings relative to exemptions from zoning requirements for such corporations. The PUC would be required to give both the municipality and the corporation appropriate legal and due process opportunities for a full hearing on all issues related to the requested exemption.

Section 619.1: Transferrable Development Rights.

This new section provides some general guidelines for the optional establishment of a TDR approach by municipalities as discussed in Sections 603 and 605.

Subsection (a). This subsection authorizes transfer of development rights provided that it is authorized by provisions in a local ordinance in accordance with the prescriptions of Article VI (Zoning) and Article VII (Planned Residential Development). The development rights are created as a separate estate in land, are severable, and may be separately conveyable in fee simple.

Subsection (b). This subsection requires that the development rights be conveyed by deed and recorded in the office of recorder of deeds.

Subsection (c). This subsection specifies the recorder of deeds shall not record an instrument of conveyance unless it contains the approval of the municipal governing body and is dated not more than 60 days prior to the date of recording.

Subsection (d). This subsection specifies that the development rights are not transferrable beyond the boundaries of the municipality which has authorized said transfer of development rights.

ARTICLE VII - PLANNED RESIDENTIAL DEVELOPMENT

Section 701: Purposes.

This section is amended to add references to nonresidential uses, consistent with the proposed definition of Planned Residential Development (PRD). This would provide for more varied uses in planned developments.

Section 702: Grant of Power.

This section is amended to specify that a PRD can be implemented only through provisions within a zoning ordinance. Separate PRD ordinances are to be eliminated within five years of the date of enactment of this bill (see Section 713). The PRD ordinance has not been widely used and could create confusion in terms of its relationship to zoning.

Clause (1). The introduction and clause (1) are amended to specify that only the governing body (or the planning agency, if designated) is authorized to administer PRD provisions, consistent with zoning procedures.

Section 702.1: Transferable Development Rights.

This section is added to authorize municipalities to utilize an option to transfer development rights in conjunction with provisions for planned residential developments. Municipalities may either limit the use of transferable development rights (TDRs) to PRDs or adopt a more comprehensive approach throughout the community (pursuant to the provisions of Section 619.1).

Section 703: Applicability of Comprehensive Plan and Statement of Community Development Objectives.

This section and its title are amended to make clear that PRD provisions must be based on and interpreted pursuant to the Statement of Community Development Objectives which may have its basis in either the comprehensive plan or a statement of legislative findings (see Section 606). The term "provisions" is used instead of "ordinance," consistent with the amendments to Article VII.

Section 704: Jurisdiction of County Planning Agencies.

The section is subdivided to facilitate reading. The general term "municipality" is used consistent with other sections of the Code.

Subsection (a). This subsection is editorially amended.

Subsection (b). The option of a municipality designating the county planning agency as administrator of PRD provisions is eliminated to be

consistent with the proposal to limit PRD administration to municipal governing bodies and planning agencies.

Section 705: Standards and Conditions for Planned Residential Development.

This section is editorially revised and restructured to facilitate reading and reference. The term "provisions" is substituted for the term "ordinance," consistent with other sections of this Article. In addition, changes have been made to conform this section to the amended definition of "Planned Residential Development" in Section 107(a) to permit flexibility and innovation in planned developments. Subsection (j) was added by amendment in the Senate Local Government Committee at the request of the Public Utility Commission (PUC). The intent is to insure that every owner of a lot within a subdivision or development shall have access to available water supply by requiring an applicant to present evidence in the form of either a PUC Certificate of Public Convenience, an application therefor, an agreement to provide water service from a bona fide association of lot owners, or a written agreement from a municipal authority or utility that such a water supply is available. If water is supplied by private wells owned and maintained by lot owners, this subsection (j) becomes inapplicable.

Section 706: Enforcement and Modification of Provisions of the Plan.

This section is editorially amended.

Section 707: Application for Tentative Approval of Planned Residential Development.

This section is amended to reflect the editorial changes in Section 702 concerning PRD provisions and the delegation of administration powers only to the planning agency. In clause (4)(v) "water supply" is added to insure consideration of this important issue in PRD plan submissions.

Section 708: Public Hearings.

Subsections (a) and (b) are partially and entirely deleted, respectively, and cross-reference is made to the hearing procedure set forth in Article IX. Subsection (a) is also amended to limit delegation of PRD administration powers to the planning agency only.

Subsection (c) is added to make available for PRD dispute resolution the mediation option proposed in Article IX.

Section 709: Findings.

This section is amended editorially to facilitate reading.

Section 710: Status of Plan After Tentative Approval.

This section is amended to clarify that the municipal secretary shall certify the approval of a tentative PRD plan. Furthermore, since the amendments to Section 702 limit PRD provisions to the zoning ordinance, this section clarifies that a zoning map amendment is deemed to occur following tentative plan approval.

Section 711: Application for Final Approval.

Subsections (a), (b), and (c). Generally, the amendments to these subsections are editorial.

Subsection (d). A provision is added to this subsection to cross-reference Article V for requirements concerning the recording of final plans. A cross-reference added to the specific time periods in Article V for development of approved subdivision and land development plans is also added.

Subsection (e). The reference to resubdivision is proposed to be deleted since a zoning map amendment would be a necessary prerequisite for resubdivision.

Section 712.1: Enforcement Penalties.

This new section provides for "enforcement penalties" for violations of PRD provisions.

Subsection (a). A civil penalty is imposed for violation of PRD provisions. This is deemed to be more in keeping with the nature of such violations and the reality that criminal prosecutions for violations of municipal ordinances are far from commonplace. Liability for violation shall result in a civil fine of $500 plus costs of prosecution and attorney's fees incurred by the municipality, but no violation shall be deemed to have occurred nor any fine commenced, imposed, or paid until a final determination is made. In addition, a district justice shall have authority to issue an order requiring a defendent to remedy a violation. In the case of a default of payment of the fine or failure to comply with the order of the District Justice, the municipality may petition the Court of Common Pleas for a contempt citation. Each day the violation continues shall constitute a separate violation, unless it is determined that a good faith basis existed for the violation in which case there shall be deemed only one violation until the fifth day following the violation; thereafter, each day shall constitute a separate violation.

Subsection (b). This subsection authorizes the Court of Common Pleas to grant a stay tolling the per diem fine upon petition and cause shown pending final adjudication. All fines for violations shall be paid over to the municipality whose PRD provisions have been violated.

Subsection (c). This subsection declares that the municipality has the exclusive right to commence an action for enforcement pursuant to this section.

Section 713: Compliance by Municipalities.

This new section grants a five year grace period from the effective date of this amendatory act within which municipalities with existing PRD ordinances must comply with the new provisions of this Article.

ARTICLE VIII-A - JOINT MUNICIPAL ZONING

It is proposed that Article XI-A be repealed in its entirety and replaced by a new Article VIII-A which also incorporates most of the language of Senate Bill 590, Printer's No. 602 of 1981. Article VIII-A uses the format of Article VI.

Section 801-A: General Powers.

Subsection (a). Subsection (a) contains language similar to the authorization in existing Section 1101-A (General Powers). It sets forth the purpose of joint municipal zoning which includes the authorization for municipalities to cooperate through joint municipal zoning ordinances to plan for and regulate future growth and enable the implementation of joint municipal comprehensive plans.

Subsection (b). This subsection is added to clarify that the joint municipal zoning ordinance must be based on an adopted joint municipal comprehensive plan.

Section 802-A: Relation to County and Municipal Zoning.

This section is derived from existing Section 1105-A(6) and clarifies the relationship between the joint municipal zoning ordinance and existing zoning ordinances. By its terms it repeals any county zoning ordinance or municipal zoning ordinance in effect in a municipality which has adopted a joint municipal zoning ordinance as of the effective date of the joint municipal zoning ordinance.

Section 803-A: Ordinance Provisions.

This section cross-references Section 603 (Ordinance Provisions) for the provisions which may be embodied in zoning ordinances.

Section 804-A: Zoning Purposes.

This section requires that joint municipal zoning ordinances serve the same purposes required by Section 604 for municipal zoning.

Section 805-A: Classifications.

This section requires that authorizations and clarifications set forth in Section 605 are applicable to joint municipal zoning. It also specifically mandates that no area of any participating municipality be left unzoned.

Section 806-A: Statement of Community Development Objectives.

Subsection (a). The statement of community development objectives required for municipal zoning ordinances by Section 606 is also required for joint municipal zoning ordinances.

Subsection (b). This subsection requires that the statement of community development objectives for a joint municipal zoning ordinance must be based upon the joint municipal comprehensive plan and may be supplemented by a statement of legislative finding of the participating governing bodies. The statement of community development objectives required for individual municipal zoning ordinances shall be based on either a comprehensive plan or a statement of legislative findings by the governing body. Emphasis on the use of the joint comprehensive plan is important and necessary in developing a joint municipal zoning ordinance which will address the varied and comprehensive zoning considerations inherent in intermunicipal and area-wide cooperative zoning efforts. Input for local community development objectives is protected by the provisions of Subsection (c), below.

Subsection (c). This subsection is intended to ensure that the statement of community development objectives for a joint municipal zoning ordinance fully considers and does not ignore the particular community development objectives and needs of each participating municipality.

Section 807-A: Preparation of Proposed Zoning Ordinance.

This section cross-references Section 607 to set forth the procedures for preparing the proposed joint municipal zoning ordinance. The procedures are the same as those for preparing a municipal zoning ordinance with the exception that (1) responsibility for preparation of the ordinance is vested in a joint municipal planning commission, and (2) the joint municipal planning commission must hold at least one public meeting in the area of jurisdiction of the proposed joint municipal zoning ordinance.

Section 808-A: Enactment of Zoning Ordinances.

Subsection (a). This subsection cross-references Section 608 to set forth the procedures to enact a joint municipal zoning ordinance.

Subsection (b). This subsection requires that the joint municipal zoning ordinance shall not become effective until enacted by all participating municipalities.

Subsection (c). This subsection sets forth the prerequisites for withdrawal from and repeal of joint municipal zoning.

No municipality may effectively withdraw from a joint municipal zoning venture during the initial three years following the date of enactment of a joint municipal zoning ordinance.

A municipality may make its withdrawal from a joint municipal zoning venture effective at the end of the initial three-year period if after the second year following enactment of a joint municipal zoning ordinance the

municipality enacts an ordinance repealing the joint municipal zoning ordinance and furnishes one year advanced notice of its desire to withdraw to all municipalities participating in a joint municipal zoning ordinance. This withdrawal shall not become effective for a period of one year following the enactment of the repealing ordinance and notice of withdrawal.

However, if a municipality wishes to make its withdrawal from a joint municipal zoning ordinance effective anytime after the initial three-year period it must enact an ordinance repealing the joint municipal zoning ordinance and furnish a one year advanced notice of its desire to withdraw to the governing bodies of all municipalities participating in the joint municipal zoning ordinance. The withdrawal shall not become effective for a period of one year following enactment of the repealing ordinance and notice of the withdrawal.

A withdrawal may become effective at an earlier date if the governing bodies of all municipalities party to the joint municipal zoning ordinance grant unanimous approval by ordinance.

Section 809-A: Enactment of Zoning Ordinance Amendments.

This section sets forth procedures for enactment of amendments to a joint municipal zoning ordinance and cross-references Section 609.

Subsection (a). This subsection cross-references Section 609 for the procedures for enactment of amendments to joint municipal zoning ordinances. However, the proposed amendments must also be submitted to the joint municipal planning commission for review at least 30 days prior to the hearing on such proposed amendments.

Subsection (b). This subsection requires the governing bodies of the other participating municipalities to submit their comments, including a specific recommendation to adopt or reject a proposed amendment, to the governing body of the municipality within which the amendment is proposed no later than the date of the public hearing on the proposed amendment. A municipality's failure to comment shall be construed as a recommendation to adopt a proposed amendment.

Subsection (c). This subsection requires unanimous approval by participating municipalities to adopt an amendment.

Section 810-A: Procedure for Curative Amendments.

This section cross-references Section 609.1 concerning procedure for curative amendments, but the governing body before which a curative amendment is brought is prohibited from accepting any amendment to a joint zoning ordinance unless approved by the other participating municipalities. Any challenge to the validity of a joint municipal zoning ordinance shall be directed to the ordinance as it applies to the entire area within the jurisdiction of a joint municipal zoning ordinance.

Section 811-A: Area of Jurisdiction for Challenges.

This section directs the courts to evaluate validity challenges in terms of the ordinance and the area of its jurisdiction as a whole, rather than as a single constituent municipality.

Section 812-A: Procedure for Joint Municipal Curative Amendments.

This section cross-references Section 609.2 for procedures for joint municipal curative amendments. The restriction in Section 609.2(4) specifying that "self-cure" procedures can only be used once in a three-year period applies to all the municipalities participating in a joint municipal zoning ordinance.

Section 813-A: Publication, Advertisement and Availability of Ordinances.

This section cross-references Section 610 for the content of public notices and for the procedure for advertisement and adoption of joint municipal zoning ordinances and amendments.

Section 814-A: Registration of Nonconforming Uses.

This section cross-references Section 613 for the provisions relating to registration of nonconforming uses, structures, and lots.

Section 815-A: Administration.

This section provides for the administration of a joint municipal zoning ordinance by zoning hearing boards and cross-references Section 904 for specific provisions.

Subsection (a). This subsection permits the municipalities which are parties to a joint municipal zoning ordinance to specify in the ordinance either the creation of a joint municipal zoning hearing board to administer the entire joint municipal zoning ordinance or the creation or retention of a zoning hearing board in each of the individual participating municipalities to administer the ordinance as to properties located within each individual municipality. If a joint zoning board is created, it shall follow the same procedures set forth in Article IX for municipal zoning hearing boards.

Subsection (b). This subsection cross-references Section 614 for specific provisions relating to the powers and duties of zoning officers. In addition, the joint municipal zoning ordinance may specify the number of zoning officers to be appointed to administer the ordinance and whether either (1) a zoning officer is appointed by each participating municipality to administer the zoning ordinance within its municipal boundaries or (2) a zoning officer is appointed to administer the zoning ordinance throughout the jurisdiction of the joint municipal zoning ordinance.

Section 816-A: Zoning Appeals.

This section cross-references the proposed appeal provisions of Articles IX and X-A for all rights and procedures relating to zoning appeals.

Section 817-A: Enforcement Penalties.

This section cross-references Section 617.1 for provisions relating to penalties for violation of the zoning ordinance.

Section 818-A: Enforcement Remedies.

Subsection (a). This subsection cross-references Section 617 for remedies available to correct violations of the zoning ordinances.

Subsection (b). This subsection emphasises the binding nature of the joint municipal zoning ordinance on all participating municipalities. The provisions of the joint municipal zoning ordinance may be enforced by appropriate remedy by any one or more of the municipalities against any other municipality party thereto.

Section 819-A: Finances.

Subsection (a). This subsection cross-references Section 617.2 for provisions relating to funding the administration of the joint municipal zoning ordinance.

Subsection (b). This subsection requires the joint zoning ordinance to specify the manner and extent of financing the administrative and enforcement costs for administering, enforcing, and defending the joint municipal zoning ordinance.

Section 820-A: Exemptions.

This section cross-references Section 619 for exemptions to the joint municipal zoning ordinance.

Section 821-A: Existing Bodies.

This section grants a five-year grandfather period to existing joint zoning hearing boards to allow time for compliance with provisions of new Article VIII-A.

ARTICLE IX
ZONING HEARING BOARD AND OTHER ADMINISTRATIVE PROCEEDINGS

This Article is revised and amended to set forth in a clear and concise manner the jurisdiction and the administrative and quasi-judicial procedures of the respective non-judicial local agencies charged with the administration of the Pennsylvania Municipalities Planning Code.

Since the Task Force discovered that jurisdictional provisions were interspersed throughout the Code, it decided and intended to dedicate an Article exclusively to matters of jurisdiction and procedure. Thus all such provisions are consolidated in Article IX. The title of this Article is changed to reflect its expanded scope and applicability.

Section 901. General Provisions.

This section has been amended to reflect its more general scope and to indicate that whenever the term "board" is used it is to mean "zoning hearing board" unless otherwise noted by its contextual use.

Section 902. Existing Boards of Adjustment.

This existing section is proposed to be repealed. It was originally enacted as a transitional provision and is no longer necessary.

Section 903. Membership of Board.

This section is amended to provide the zoning hearing board a more stable and continuous membership. It is intended that through these provisions the public policy and public interests served by the board would be more continually preserved and more carefully reviewed.

Subsection (a). This subsection is amended to change the term of office and appointment sequence for a five-member zoning hearing board to reflect the five year minimum term of such a board. Additionally, the option of allowing a planning commission member to be a member of the zoning hearing board is eliminated to avoid any potential conflict-of-interest situations.

Subsection (b). The change from a five-member board back to a three-member board is to be made by the governing body rather than by referendum. This is consistent with the provisions to increase the size of the zoning hearing board from three to five members, which only requires action by the governing body. However, a change could not occur more frequently than once every five years to avoid the possibility of altering the size of the board for a particular matter and then reverting to the original number after the matter is resolved.

Subsection (c). This new subsection provides for the appointment of alternate board members as well as their rights and duties. These provisions

are intended to insure that a zoning hearing board will still be able to function should one or more members resign or be unable to attend a meeting.

Section 904. Joint Zoning Hearing Board.

This section is subdivided into subsections to facilitate reading. Subsection (a) authorizes the creation of joint boards. Subsection (b) establishes the term of office of joint board members and specifically eliminates membership by a person who is a member of a municipality's planning commission. Subsection (c) is added to provide for the appointment and qualification of legal counsel for the joint board. Subsection (d) requires the joint zoning hearing board to comply with all other provisions of the act unless inconsistent with this section.

Section 905. Removal of Members.

This section is amended editorially.

Section 906. Organization of Board.

This section is amended by adding a provision for designation of alternate members to serve as voting members of a board. The amendment also further provides for local discretion and flexibility by clarifing that the board's records are the property of the municipality (to eliminate any ambiguity that may presently exist), and that the board's activity report is to be made at the request of the governing body rather than every year.

Section 907. Expenditures for Services.

The amendment to this section authorizes compensation for alternate members, sets the manner in which it is to be determined, and establishes its limits.

Section 908. Hearings.

This section establishes procedural requirements for the conduct of a hearing by the zoning hearing board.

Clause (1). This revised clause is intended to clairfy how and to whom written notice must be given prior to a hearing. The public notice requirement is also retained and must be given in the manner set forth in Section 107.

Clause (1.1). This clause is added to permit a governing body to set reasonable fees for zoning hearing board proceedings, including compensation of the secretary and members of the board, costs of notice and advertising, and necessary administrative overhead costs. No fees are chargeable for various professional and expert services. It is intended that this provision will alleviate the burden of unreasonable fee schedules while providing adequate and just cost reimbursement to the municipality.

Clause (1.2). This clause is added to require that an applicant's appeal be heard by the board no later than 60 days from the applicant's request unless the applicant agrees to an extension in writing. The intent of this amendment is to ensure that the applicant receive a prompt and expeditious hearing without costly delays that might result in a project's demise.

Clause (2). This clause was amended to provide that a party to a zoning hearing board proceeding conducted by an appointed hearing officer may accept the decision of the hearing officer as final.

Clauses (3), (4), (5), and (6). No amendments are made to these clauses.

Clause (7). This clause is amended to clarify the payment of a stenographer's fee. The appearance fee is to be paid by the applicant and the board equally. Transcription costs are paid by the party requesting a transcript, whether an original or a copy; however, in the case of an appeal, the cost of the transcript shall be paid by the party appealing the decision. This amendment is intended to avoid the imposition of disproportionate transcription costs upon either the applicant or municipality.

Clause (8). This clause is amended to clarify that advice from the solicitor is not included as communications which the zoning hearing board or hearing officer is prohibited from reviewing without approval of affected parties.

Clause (9). Time limits for the delivery of the hearing examiner's report and the board's decision are proposed to avoid unnecessary delay. Clarification as to who must notify the public of a favorable decision because of failure to act within the time limits is proposed to insure that such notice is given. The time allowed the zoning hearing board to render a decision on a hearing officer's report is reduced from 45 to 30 days. An applicant may agree to an extension of time from these specified limits either on the record or in writing. The timing of the notice and appeals from such decisions is also clarified.

Clause (10). There are no amendments to this clause.

Section 908.1. Mediation Option.

This is a new section which introduces a mediation option as a supplement to proceedings initiated under Article IX and X-A. It is not mandatory; the municipality may choose to offer or not offer mediation, and any party may refuse to participate in mediation. Nor is mediation a substitute for the proceedings which are required by Articles IX and X-A. Current legal process for the resolution of land use disputes shall continue to exist as a matter of right. Mediation is not intended to subvert the letter of the law but rather to facilitate the final disposition of the proceedings when flexibility in the application of relevant standards and conditions is authorized under the Act.

In order to encourage use of the mediation process, this section prohibits the evidentiary use of any offers or statements made during mediation in any subsequent judicial or administrative proceeding.

Anticipated benefits of giving mediation official recognition in the MPC include: (1) assistance in relieving an overburdened court system and support for a public policy in Pennsylvania to encourage out-of-court settlements; (2) providing a potentially less costly, more efficient mechanism for resolving local land use disputes; and (3) providing a less polarized process than that which an adversarial administrative hearing and legal proceedings tend to create.

Section 909. Board's Functions: Appeals from the Zoning Officer.

This section is repealed and its provisions are included in new Section 909.1(a)(3) and Section 910.1.

Section 909.1. Jurisdiction.

This section sets forth the jurisdiction of the zoning hearing board and the governing body. It is intended to set forth in this section a listing of various matters which shall be heard exclusively by each respective local body or administrative agency.

Subsection (a). Jurisdiction of the zoning hearing board. The following matters are intended to be heard solely and exclusively by the zoning hearing board.

1. Substantive challenges to the validity of any land use ordinance except curative amendments brought under Section 609.1. This provision is derived from existing Section 910 (repealed) and existing Section 1004 (repealed), and intends to remove from the jurisdiction of the governing body all substantive validity challenges, except section 609.1 curative amendment challenges.

2. Procedural challenges to the validity of any land use ordinance, including challenges raising questions of defective enactment. This provision is derived from existing Section 1003. It is intended to remove such challenges from initial judicial review and place such review before the zoning hearing board. The purpose of such an administrative review is to relieve the burden placed upon the courts in hearing matters that can more easily be resolved at the administrative level with the expenditure of less time and money. However, if any party is adversely affected by a decision of the zoning hearing board on any of these issues, an appeal may be made to the court as provied in Section 1001-A.

3. Appeals from any determination (as defined in Section 107(b)) of a zoning officer. This paragraph is derived from existing Section 909. The intent of this provision is to make all determinations of a zoning officer appealable to only the zoning hearing board.

4. Appeals from determinations by a municipal engineer or zoning

officer in matters relating to the administration of flood plain or flood hazard ordinances. The purpose is to clearly set forth in the Code the local administrative agency to which such determinations are appealable.

5. Applications for a variance from a zoning, flood plain, or flood hazard ordinance. This section is derived from existing Section 912. Section 910.2 is cross-referenced for the prerequisites and procedure for the granting of a variance.

6. Application for special exceptions pursuant to a zoning, flood plain, or flood hazard ordinance. This provision is derived from existing Section 913, and cross-references new Section 912.1 for the conduct of the proceedings.

7. Appeals from the administrative determination of transfer of development rights. This is a new provision and confers new jurisdiction upon the zoning hearing board.

8. Appeals from a zoning officer's preliminary opinion about compliance with applicable ordinance and map requirements. This provision is derived from Section 1005. The existing Code currently vests jurisdiction in the zoning hearing board; these amendments continue to vest jurisdiction in the zoning hearing board. Section 916.2 is cross-referenced.

9. Appeals of determinations concerning sedimentation and erosion control and storm water management. This paragraph is not derived from any specific section of the existing Code but is intended to vest in the zoning hearing board jurisdiction to hear appeals from determinations of either the zoning officer or municipal engineer which relate to the administration of a land use ordinance that deals with sedimentation and erosion control and storm water management but which does not relate to an application for land development under Article V or Article VII. If the determination does relate to an application for land development under Article V or Article VII, then jurisdiction is vested in the governing body pursuant to Section 909.1(b)(6).

Subsection (b). This new subsection vests exclusive administrative jurisdiction in the governing body (or the designated planning agency) over the following matters.

1. Applications for approval of planned residential developments. This provision is derived from and clarifies and supplements Section 702 of the existing Code. Its purpose is to give exclusive jurisdiction to the governing body, or designated planning agency, as the case may be, to review and approve or disapprove all applications for Planned Residential Developments (PRDs). Since the governing body or designated planning agency now has exclusive jurisdiction over these matters, provisions in existing Code Section 702 which permit the governing body to designate a committee, commission, or

administrative officer to perform this function are inconsistent and are deleted. The intent of this change is to ensure that only the duly elected officials of the municipality or qualified planning agencies carefully and intelligently examine the impacts of a PRD upon community needs and standards. This provision also is consistent with existing provisions of the Code which authorize only the governing body or designated planning agency to review subdivision and land development applications (see Section 508, and 909.1(b)(2)), since PRDs are nothing more than sophisticated subdivision and land development plans integrated with other aspects of broad-based community planning. Section 702 is cross-referenced.

2. Applications for subdivision and land development. This provision reaffirms and supplements the jurisdictional requirements of Sections 501 and 508 of the existing Code. The purpose is to give the governing body exclusive jurisdiction over all applications for approval of subdivision or land development unless the subdivision or land development ordinance requires submission to a designated planning agency in which case the exclusivity of jurisdiction shall rest with the planning agency. This section cross-references Section 508 for procedural mandates.

3. Applications for conditional uses. This provision reaffirms the jurisdiction of the governing body over conditional use applications as found in Section 603(b)(2) of the existing Code and in Section 603(c)(2) of this amended Code. Thus, this provision makes no change to the Code. Section 603(c)(2) is cross-referenced for procedural requirements.

4. Applications for a curative amendment to a zoning ordinance. This provision reaffirms the exclusive jurisdiction of the governing body to hear curative amendments. This jurisdiction is now exercised exclusively by the governing body (see existing Section 1004, and new Section 916.1). It is intended that the Code clearly state that all curative amendments be heard by and decided by the governing body since it is the only local entity within a municipality authorized to act legislatively. A curative amendment seeks to remedy an ordinance challenged by a landowner on substantive grounds as defective. The jurisdiction of the governing body in this provision differs from the jurisdiction vested in the zoning hearing board by Section 909.1(a)(1) in that no request for a curative amendment is made to the zoning hearing board. Sections 609.1 and 916.1 (a)(2) are cross-referenced for procedural requirements.

5. Petitions for amendments to land use ordinances. This provision is derived from Sections 601 and 609 and does not represent any substantive changes. The intent is to affirmatively declare the power of the governing body, and only the governing body, to amend land use ordinances. Section 609 is cross-referenced for procedural requirements.

6. Appeals from any determination of a zoning officer or municipal engineer made in the administration of any application for subdivision and land development (Article V) or for a PRD (Article VII) with respect to sedimentation and erosion control and storm water management. This provision is intended to clarify the exclusive jurisdiction of the governing body, or its designated planning agency, to review such matters. This is consistent with other provisions of the act which confer original or appellant jurisdiction upon the governing body or its designated planning agency in matters which are governed by the subdivision and land development and PRD ordinances (see: subdivision and land development Article V, Section 508, Section 909.1(b)(2); PRDs Article VII, Section 702, Section 909.1(b)(1)). If the determination of the officer or engineer is not made during the course of a pending application for subdivision and land development or for a PRD, then the appeal is to be to the zoning hearing board as required by Section 909.1(a)(9).

7. Applications for either a special encroachment permit pursuant to Section 405 or a permit to build, subdivide, or develop land pursuant to Section 406. This jurisdiction is currently exercised by the governing body. It is set forth in this section in order to reaffirm that jurisdiction over these matters cannot be exercised by any local agency or administrative officer other than the governing body.

Section 910. Board Functions: Challenge to the Validity of Any Ordinance or Map.

This existing section of the Code is repealed because its provisions are now contained in Section 909.1(a)(1).

Section 910.1. Applicability of Judicial Remedies.

This section is derived from and is the same as part of Section 909 repealed of the existing Code. Its purpose is to ensure that an action in mandamus is always an available remedy when appropriate.

Section 910.2. Zoning Hearing Board's Functions: Variances.

This section is derived from existing Section 912. It delineates the zoning hearing board's procedural mandates for deciding an application for a variance. The jurisdiction of the zoning hearing board to decide variance applications is set forth in Section 909.1(a)(5).

Section 912. Board's Functions: Variances.

This existing section of the Code is repealed. Its provisions have been reenacted and renumbered as Section 910.2 (Variances), and the jurisdiction of the zoning hearing board to decide variances is reaffirmed in Section 909.1(a)(5).

Section 912.1. Zoning Hearing Board's Functions: Special Exceptions.

This section is derived from and is identical to existing Section 913. It delineates the zoning hearing board's procedural requirements for deciding applications for special exceptions. The jurisdiction of the zoning hearing board to decide special exception applications is set forth in Section 909.1(a)(6).

Section 913. Board's Functions: Special Exceptions.

This existing section of the Code is repealed and its provisions have been reenacted and renumbered as Section 912.1 (Special Exceptions). The jurisdiction of the zoning hearing board to decide applications for special exceptions is set forth in Section 909.1(a)(6).

Section 913.1: Unified Appeals.

This existing section is repealed. Provisions of this section would be inconsistent with the exclusive jurisdiction provisions of Section 909.1.

Section 913.2: Governing Body's Functions: Conditional Uses.

This section references the governing body's functions for conditional uses in precisely the same manner as the zoning hearing board's functions are treated with reference to special exceptions in Section 912.1. This section is added to ensure that the governing body conduct a hearing and apply the required standards and criteria when deciding applications for conditional uses. Section 603(c)(2) authorizes the inclusion of provisions for conditional uses into zoning ordinances, and Section 909.1(b)(3) conveys exclusive jurisdiction upon the governing body to decide applications for conditional uses.

Section 913.3: Parties Appellant Before the Board.

This section reenacts the provisions of existing Section 914 and conforms them to the new Code. No substantive changes are made. It specifically delineates the right of any affected landowner, any officer or agent of a municipality, or any aggrieved person to file an appeal as a party appellant before the zoning hearing board on any matter within the jurisdiction of the board as set forth in Section 909.1(a)(1), (2), (3), (4), (7), (8), and (9). It also authorizes any landowner or any tenant of a landowner (with permission of the landowner) to file an application for either a variance or a special exception as a party in interest.

Section 914: Parties Appellant Before the Board.

This existing section is repealed. Its provisions are now set forth in Section 913.3.

Section 914.1: Time Limitations.

Determinations

Subsection (a) of this section is a reenactment and renumbering of existing Section 915. It is intended to give to a person aggrieved by any determination (as defined in Section 107(b)) by a municipal official or a municipality pursuant to a land use ordinance (as defined in Section 107(b)) the right to file the appropriate action or participate in the appropriate proceeding as a party appellant before the zoning hearing board at any time, but only if the aggrieved person alleges and proves that he had no notice, knowledge, or reason to believe that approval was given or other official action was taken. If lack of notice, knowledge, or belief cannot be shown, the aggrieved person will be barred from proceeding before the zoning hearing board after the expiration of 30 days from the date of the determination. This provision applies to any number of actions taken pursuant to a land use ordinance (as defined in Section 107(b)). It is intended as a time limitation within which only an aggrieved party (other than a landowner entitled to an appeal pursuant to Section 914.1(b)) may appeal a determination (as defined in Section 107(b)) granting a permit to a landowner under a land use ordinance. This right of appeal applies whether the determination is final or tentative.

Subsection (b) is intended to require that all "determinations" (as defined in Section 107(b)) adverse to a landowner must be appealed within 30 days of actual or deemed notice of the determination. Subsection (b) applies to those areas of jurisdiction set forth in Sections 909.1(a)(3), (4), (7), (8), and (9), and Section 909.1(b)(6). It is derived from existing Section 1006(2).

Decisions

Any decision (as defined in Section 107(b)) is appealable directly to court. In such cases, subsection (a) does not apply since notice of the intended decision will have been provided to all interested parties and to the public as required by this Act. Thus, no such person could legitimately complain that he was not given actual or constructive notice or had no knowledge or reason to believe that a decision was rendered.

Applications, Petitions and Challenges

Any application or petition within the jurisdiction set forth in Section 909.1(a)(5), and (6), and Section 909.1(b)(1), (2), (3), (4), (5), and (7) may be made at any time.

Section 915: Time Limitations: Persons Aggrieved.

This section is repealed since it is now renumbered as Section 914.1(a).

Section 915.1: Stay of Proceedings.

Subsections (a), (b), and (c) are derived from existing Section 916. They differ from the existing provisions in that subsection (b) shifts the burden

of proof on the issue of frivolity to the party responding to the petition for a bond and subsection (c) expressly states that an order denying or requiring a bond is non-appealable as an interlocutory order, unless appealable pursuant to 42 Pa.C.S. 702. Subsection (d) is an added (new) provision which is intended to deter frivolous appeals to the Appellate Courts of zoning cases dismissed by the Court of Common Pleas for refusal to post a bond by imposing reasonable costs, expenses, and attorneys' fees upon the party abusing the appellate process if the appellate court affirms the order of the Court of Common Pleas. Too often a decision as to whether a bond should be posted is appealed merely to delay and ultimately discourage development by the passage of time.

Section 916: Stay of Proceedings.

This existing section is repealed and is now incorporated into new Section 915.1.

Section 916.1: Validity of Ordinance; Substantive Questions.

This section is derived from existing Sections 1004 and 1005 and deals with challenges to the validity of an ordinance on substantive grounds, whether by a landowner or by an aggrieved person(s). It also sets forth the procedures to which each is entitled upon submission of a challenge. The section intends to streamline the procedures set forth in Sections 1004 and 1005 and to place them in Article IX since they concern proceedings before non-judicial bodies.

Subsection (a). This subsection sets forth the statutory authority for a landowner's substantive challenge to the validity of any land use ordinance or map. It is derived from Section 1004. If the landowner chooses to merely challenge the validity of the ordinance without submitting a curative amendment, then the challenge must be submitted to the zoning hearing board under Section 909.1(a)(1); but if the landowner chooses to submit a curative amendment along with the substantive validity challenge to a zoning ordinance, then the challenge and the curative amendment request must be submitted to the governing body pursuant to Section 909.1(b)(4).

With respect to zoning ordinances these choices are mutually exclusive. The landowner must elect to submit the substantive validity challenge either with or without a request for a curative amendment, but cannot elect to submit both; and cannot proceed before both the zoning hearing board and the governing body concurrently on a substantive challenge to validity. This is consistent with the provisions of Section 909.1(a) and (b) which vest exclusive jurisdiction in the zoning hearing board for a pure substantive validity challenge, and exclusive jurisdiction in the governing body for a substantive validity challenge accompanied by a request for a curative amendment.

Subsection (b). This subsection is derived from existing Section 1005. It requires that any aggrieved person who challenges the validity of a land use ordinance must submit the challenge to the zoning hearing board. This

provision is consistent with provisions of Section 909.1(a)(1) which gives the zoning hearing board exclusive jurisdiction over such challenges.

Subsection (c). This subsection sets forth the procedures for deciding a substantive challenge to the validity of an ordinance whether presented to the governing body or the zoning hearing board. It is derived from existing Sections 1004(2) and 1005. Clause (2) of this subsection specifically requires that any challenge which involves a curative amendment must also include a proposed amendment to the allegedly defective ordinance. Clauses (3) and (4) require segregation of the so-called adversarial and judicial functions in a curative amendment proceeding by mandating that the governing body be advised in its judicial capacity by the municipal solicitor and that an independent attorney be retained to present the governing body's defense to the challenge. This provision codifies the principle established in case law that municipal adjudicative bodies must avoid unnecessary conflicts and commingling of incompatible functions whenever possible. See Gardner v. Repasky, 434 Pa. 126, 252 A 2d 704 (1969), Horn v. Township of Hilltown, 461 Pa. 745, 337 A 2d 858 (1975), Sultanik v. Board of Supervisors of Worchester Township, 88 Pa. Comwlth. 214, 488 A 2d 1197 (1985). Clause (5) requires that a decision be rendered within 45 days of the conclusion of the last hearing, and clause (6) establishes a statutory denial of the challenge as of the 46th day after the conclusion of the last hearing if a decision is not rendered on the 45th day.

Subsection (d). This section requires that the zoning hearing board or the governing body commence its proceedings no later than 60 days after the challenge is filed unless the landowner agrees to a continuance. This provision is derived from and is the same as existing provisions set forth in existing Sections 1004(2)(f) and 1005.

Subsection (e). This subsection sets forth notice requirements for any substantive validity challenge.

Subsection (f). This subsection sets forth criteria for determining a deemed denial of a substantive validity challenge.

Subsection (g). This subsection is added to extend to curative amendments and substantive validity challenges the same principle of protection of vested rights which already applies to special exceptions and conditional uses by virtue of Act 130 of 1982. A provision has also been added to divest the landowner of the protection afforded by this subsection if the landowner fails to proceed with development within specific time limits in order to encourage a landowner who is granted a curative amendment or who has challenged the validity of a land use ordinance on substantive grounds to proceed with development within a reasonable time and without undue delay.

Section 916.2: Procedure to Obtain Preliminary Opinion.

This section is derived from and is the same as Section 1005(b). No substantive change is made.

ARTICLE X - APPEALS

This Article is repealed. Its provisions, with amendments, are contained in Article X-A (Appeals to Court).

ARTICLE X-A
APPEALS TO COURT

The provisions of this new Article address the issues of standing, jurisdiction, venue, and procedure for an appeal of a land use ordinance decision to court. The important distinction between this Article and the provisions of Article IX is that Article IX governs matters of administrative jurisdiction and appeals of determinations (as defined in Section 107(b)) to local agencies. This Article governs all matters of appeal after a decision is made by local agencies on matters within their original administrative jurisdiction or concerning matters which are appealed from such agencies for a decision.

Section 1001-A: Land Use Appeals.

This section declares that no decision (as defined in Section 107(b)) rendered pursuant to Article IX or any other provision of the act can be reviewed or appealed in any manner whatsoever other than that set forth in Article X-A. It is derived from existing Section 1001.

Section 1002-A: Jurisdiction and Venue on Appeal; Time for Appeal.

This section expressly states that any decision (as defined in Section 107(b)) rendered pursuant to Article IX is appealable to only the Court of Common Pleas of the judicial district in which the land is located. It requires that the appeal be filed no later than 30 days after either the actual entry of the decision or 30 days after the decision is deemed to have been rendered. "Entry of decision" is defined to mean the date of service of the decision or the date of mailing (if mailed) as required by 42 Pa.C.S. 5572.

Section 1003-A: Appeals to Court; Commencement; Stay of Proceedings.

This section clarifies procedures for appeal. It is derived from existing Section 1008. Subsections (a), (b), and (c) are similar to existing Subsections 1008(1), (2), and (3) and set forth the duties and responsibilities of the prothonotary upon the filing of an appeal from a decision concerning a land use ordinance. Subsection (d) permits a party to petition the court for a stay of the proceedings pending determination of the appeal and to petition the court to require that the appellant post a security bond pending determination of the appeal. It is identical to existing Subsection 1008(4) in all respects, except:

(1) the court is no longer required to decide whether an appeal of a land use ordinance decision by a local agency is "for purposes of delay" to deny the petition for posting a bond; and

(2) a provision has been added to shift the burden of proof on the issue of frivolity to the party who is the respondent to the petition to post a bond; and

(3) a provision is added to expressly state that an order denying or granting a petition for the posting of a bond is an interlocutory order.

It was concluded that "frivolity" of an appeal is a sufficient basis to require that the appellant post a bond pending a determination of the appeal since the phrase "for purposes of delay" appears to be surplus verbiage. As to the burden of proof on the issue of frivolity, this amendment intends to shift the burden of production and burden of proof to the appellant (who is the respondent to the petition for a bond) to prove that the appeal indeed is not frivolous since all the facts and circumstances concerning whether frivolity exists are within the peculiar and virtually exclusive control of the appellant. If an appeal is frivolous, the court must order appellant to post a bond; and the appeal proceeds. Any order on the petition for posting a bond is intended to be nonappealable as an interlocutory order since it is not a final determination of the appeal which would deprive the appellant of his day in court, unless such interlocutory order is appealable pursuant to the provisions of 42 Pa.C.S. 702. A provision is added to require the party who is the respondent to the petition for a bond to pay all reasonable costs, expenses, and attorney's fees which may be incurred by the petitioner as a result of an appeal to an appellate court from an order of the Court of Common Pleas dismissing the appeal before it for failure or refusal to post a bond. This provision is intended to discourage unwarranted appeals to the appellate courts by parties required by the Court of Common Pleas to post bond pursuant to this section.

Section 1004-A: Intervention.

This section is derived from and is identical to existing Section 1009. It provides for a right of intervention in the appellate proceedings by the municipality or any owner or tenant of property which is directly involved in the proceedings before the local agency.

Section 1005-A: Hearing and Argument of Land Use Appeal.

This section is derived from existing Section 1010 and amends existing language for the purpose of prohibiting a court from remanding an appeal to an administrative agency for further hearing to establish a record. If the court determines that the record is incomplete or that additional evidence is necessary for its decision, this section requires the court either to hear the additional evidence itself or appoint a referee to receive additional evidence.

Section 1006-A: Judicial Relief.

This section is derived from existing Section 1011 and sets forth authority of the court to invalidate or modify any action, decision, or order of a local land use agency or of its officials and agents.

ARTICLE XI - JOINT MUNICIPAL PLANNING COMMISSIONS

Section 1101: Legislative Finding and Declaration of Policy.

Additional wording is added to emphasize the purposes of creating joint municipal planning commissions, that is, to encourage effective planning for future development and to coordinate planning with neighboring municipalities, the county, and other governmental agencies.

Section 1102: Creation, Appointment, and Operation of Joint Municipal Planning Commission.

The less formal option of creating a joint municipal planning commission by resolution is deleted. Thus, the joint municipal planning commission must be established by an ordinance enacted by each of the individual participating municipalities.

Section 1103: Finances, Staff and Program.

Subsection (a). This subsection is editorially amended.

Subsection (a.1). Portions of existing subsection (b) are repealed and inserted in new subsection (a.1). Subsection (a.1) provides that the joint municipal planning agency may undertake any of the planning functions authorized by Section 209.1 but only at the direction of the municipal governing bodies of the participating municipalities. This provision ensures local control while at the same time providing a mechanism for comprehensive planning.

Subsection (b). In addition to the deletion (noted above), an editorial change is also made to clarify that any federal and state planning assistance grants may be accepted by any joint municipal planning agency with the consent of all governing bodies of the municipalities.

Subsection (c). This subsection enumerates the required elements of an ordinance creating a joint municipal planning commission, including provisions for its formation, activities, and dissolution.

Section 1104: Preparation of Comprehensive Plan.

Subsection (a). This subsection is amended to add a sentence to specify that a joint municipal comprehensive plan is a prerequisite for a joint municipal zoning ordinance, but that a joint municipal comprehensive plan is optional rather than mandatory in the absence of a joint municipal zoning ordinance.

Subsection (b). This new subsection defines the contents of the joint municipal comprehensive plan concerning identification of issues of significance to the member municipalities.

Subsection (c). This new subsection requires consideration of the plans of the county and adjoining municipalities in preparation of a joint municipal comprehensive plan. This provision is intended to achieve the greatest possible integration of local and intergovernmental planning objectives.

Section 1105: Cooperation Among Joint Municipal Planning Commission, Municipalities and Others.

This section is not amended.

Section 1106: Established Regional Planning Commission.

This section requires conformity with the requirements of Article XI within five years from its enactment.

Section 1107: Saving Clause.

This section is not amended.

ARTICLE XI-A - JOINT MUNICIPAL ZONING

This Article is repealed. Its provisions, with amendments, are contained in new Article VIII-A (Joint Municipal Zoning).

ADDENDUM

Section 110 of the bill is added to restate the directory language of Section 4 of Act 130 of 1982, P.L. 441. It is intended to preserve any rights or obligations created by Act 130. It is not intended that any such rights or obligations be extended beyond those created in Act 130, due to the passage of Senate Bill 535.