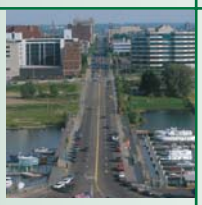
Governor's Center for Local Government Services

PLANNING SERIES #6


The Zoning Hearing Board

Commonwealth of Pennsylvania
Edward G. Rendell, Governor
www.state.pa.us

Department of Community and Economic Development
Dennis Yablonsky, Secretary
www.inventpa.com

The Zoning Hearing Board

Planning Series #6

Tenth Edition
August 2001

Comments or inquiries on the subject matter of this publication should be addressed to:

Governor's Center for Local Government Services
Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, Pennsylvania 17120-0225
(717) 787-8158
1-888-223-6837
E-mail: ra-dcedclgs@state.pa.us

This and other publications are available for viewing or downloading free-of-charge from he Department of Community and Economic Development web site. Printed copies may be ordered and purchased through a private vendor as indicated on the web site.

Access **www.inventpa.com**
Select *Communities in PA*
Select *Local Government Services*
Select *Publications*

Current Publications relating to planning and land use regulations available from the Center include:

Pennsylvania Municipalities Planning Code (Act 247, as amended)

Planning Series
#1 Local Land Use Controls in Pennsylvania
#2 The Planning Commission
#3 The Comprehensive Plan
#4 Zoning
#5 Technical Information on Floodplain Management
#6 The Zoning Hearing Board
#7 Special Exceptions, Conditional Uses and Variances
#8 Subdivision and Land Development
#9 The Zoning Officer
#10 Reducing Land Use Barriers to Affordable Housing

NOTE: These publications are periodically revised or updated to reflect changes in Pennsylvania planning law.

Photo Credit

Large Photo: Courtesy of West Lampeter Township, Lancaster County.

Preparation of this publication was financed from appropriations of the General Assembly of the Commonwealth of Pennsylvania.

Table of Contents

The Zoning Hearing Board

Introduction

Any municipality enacting a zoning ordinance must also create a zoning hearing board (ZHB). The primary purpose of such a board is to help assure fair and equitable application and administration of the zoning ordinance by hearing appeals on the zoning officer's determinations and by granting relief from the literal enforcement of the ordinance in certain hardship situations. The right to appeal for relief is an important step in insuring that due process is followed when restricting use of private property for a predetermined public good.

Since the board has no legislative power, it can neither make nor modify zoning policy. Neither does the zoning hearing board have enforcement powers. It is a quasi-judicial body; that is, its powers are to some extent judicial in nature. The board schedules hearings on applications and appeals that come before it, takes evidence, and issues written decisions with findings of fact and conclusions of law. A ZHB must limit its scope of activities to those permitted by the Pennsylvania Municipalities Planning Code (MPC) and by the local zoning ordinance.

It is important that the zoning hearing board members have a thorough knowledge not only of its specific functions, but also of its place within the arena of local planning decisions. While the board is not responsible for the contents of the zoning ordinance, it nevertheless plays a vital role in the overall effectiveness of the ordinance. In addition the board may detect weaknesses in the zoning ordinance perhaps as a result of frequent and similar variance requests. When a flaw, weakness, lack of clarity is noticed, it should be passed along.

Therefore, the board may request the planning commission or governing body to consider a zoning amendment to correct an ordinance flaw. The board certainly needs to be aware of the governing body's zoning goals and objectives. The comprehensive plan provides necessary insight into the purposes of the zoning ordinance.

Board members should be aware of MPC Section 603.1, which incorporates the judiciary's strict construction rule to aid in interpretation of ordinance provisions. The fundamental principle of this rule is that where doubt exists, as to the intended meaning of the ordinance, it must be interpreted in favor of the property owner. To misapply this rule could be considered an error of law.

The zoning hearing board has the power to assure the fair and equitable application of the zoning ordinance. Abuse of this power can, in effect, undermine the ordinance. An abuse or error of law can lead to a decision of the board being overturned on appeal.

Local officials should not take an appointment to the board lightly, nor should an appointee. It is an extremely responsible and demanding position, one that will play an important role in the growth and development of your community. The following pages provide some basic understanding of the zoning hearing board and discuss the various functions and procedures followed by the zoning hearing board.

Membership, Appointment and Organization of the Board

A zoning hearing board consists of either three or five members appointed by resolution of the governing body, all of whom must be residents* of the municipality. Members of the board shall hold no other office in the municipality. Act 170 of 1988, deleted the exception that had allowed no more than one member of the board to also be a member of the planning commission. To reiterate, a planning commission member may no longer serve on the zoning hearing board; one of the positions must be resigned.

* Legal residence is best determined by where a person lives; it not only includes a person's intention to live somewhere, but also a physical presence. A person cannot declare a residence inconsistent with the fact of where on lives.

The terms of office for a three-member board are three years and five years for a five-member board. In both three or five-member boards, the terms shall be arranged so that the term of office of one member expires each year to preserve continuity. For example, the initial terms of a three-member board will necessarily be for one, two and three-year terms in order to have only one member's term expire each year. The terms of office should also be set to expire on December 31.

Where a three-member board is changed to a five-member board, the three existing board members remain in office until the expiration of their terms. The governing body appoints by resolution two additional members whose terms are arranged so that the term of one member of the five-member board expires in any one year. Act 170 of 1988, deleted the requirement that conversion of a five-member board to a three-member board be effected by a referendum. Thus a municipality that desires to convert back to a three-member board now can do so by means of a zoning amendment.

Any vacancy occurring during a term of office is filled only for the unexpired portion of the term. Also, any member of the board may be removed for just cause by a majority vote of the governing body.

Members of the board may receive compensation for the performance of their duties. The amount of compensation, if any, is determined by the governing body. The actual rate of compensation, however, is not permitted to exceed the rate paid to the members of the governing body. Refer to MPC Section 907.

Ethics Act Filing

Zoning Hearing Board members must file a Statement of Financial Interest according to the State Ethics Law (Act 170 of 1978, as amended by Act 9 of 1989). This financial disclosure form must be filed with the governing authority of the political subdivision, such as the borough council or township office, must produce the file no later than May 1 of each year in office and also one year after leaving the position.

The Ethics Act statement even applies to nominees for membership on the Zoning Hearing Board. A financial disclosure statement must be filed 10 days before the nominee is approved or confirmed. Section 4 of the State Ethics Law also prescribes that "no public official shall be allowed to take oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests as required by this Act." Alternate members should also file the required disclosure document.

Alternate Members

If the board is unable to obtain a quorum due to absence or disqualification of a member, the Act 170 amendments provide a mechanism for alternate membership. MPC Section 903 (b) authorizes the governing body to appoint by resolution a pool of from one to three residents to serve as alternate members. The term of an alternate is three years. An alternate may not hold other office in the municipality nor be a member of the planning commission.

Once alternates have been appointed, and if a quorum cannot be achieved, the chairman of the zoning hearing board shall designate as many alternate members as necessary to reach a quorum. For instance, if a three member board has only one regular member available, the chairman must designate one alternate to reach a quorum of two. Designation of alternates must be made on a case-by-case basis in rotation according to declining seniority among all alternates.

After an alternate is seated, the alternate shall continue to serve on the board in all proceedings involving the case until the board makes a decision. Even if an alternate has not been seated or designated by the chairman to serve, any alternate may participate in any discussion or proceeding of the board, but cannot vote or be

compensated. This type of experience as a non-voting alternate can provide valuable training for a new alternate.

Instead of using alternate members, a zoning hearing board can appoint one of its members to serve as a hearing officer in situations where one or more members might be required to disqualify themselves for a particular hearing. See, Section 908.

General Operating Procedures for the Board

The board annually elects officers from its own membership and officers are able to succeed themselves. In order to conduct a hearing, it is necessary that a quorum be present, consisting of no less than a majority of all the members of the board. The board has the power to make, alter, and rescind rules for its procedure, provided that they are consistent with the rules of the municipality and of the Commonwealth. Full public records must be kept by the board and such records become property of the municipality. The board shall also submit a report of its activities to the governing body as requested.

One should also remember that the zoning hearing board is subject to the open meetings provisions of the Sunshine Law (Act 1986-84). Under the Sunshine Law, votes cast by each member must be cast publicly and the roll call votes recorded. Written minutes are required, which must include the substance of all official actions, the names of people who appear officially and the subject of their testimony. For more information, see DCED publication *Open Meetings, Open Records: The Sunshine Act and The Right To Know Law.*

Functions of the Board

Prior to Act 170 of 1988, the jurisdiction or functions of the zoning hearing board and governing body were scattered throughout the Planning Code. Now, MPC Section 909.1 - Jurisdiction - consolidates these functions in one location. The zoning hearing board jurisdictional matters can be found in subsection (a).

In brief, nine matters are enumerated as the exclusive jurisdiction for the zoning hearing board to hear and decide the following:

(1) substantive challenges to the validity of any land use ordinance, except curative amendments.

(2) procedural challenges to a land use ordinance.

(3) appeals from the determination of the zoning officer, including, but not limited to the following.

  (i) the granting or denial of any permit, or failure to act on the application.

  (ii) the issuance of any cease and desist order or.

  (iii) the registration or refusal to register any nonconforming use, structure or lot.

(4) appeals from a determination by the municipal engineer or zoning officer with respect to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance.

(5) applications for variances.

(6) applications for special exceptions.

(7) appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the zoning ordinance.

(8) appeals from the zoning officer's determination for a preliminary opinion under Section 916.2.

(9) appeals from the determination of the zoning officer or municipal engineer in the administration of any land use ordinance or provision with reference to sedimentation and erosion control or storm water management insofar as the same relates to development not involving Article V (subdivision or land development) or VII (planned residential development) applications. In other words, appeals from erosion or storm water provisions under a zoning ordinance dealing with building on a single lot.

Please note that Act 170 of 1988 added seven new definitions in subsection (b) of Section 107 that are used throughout Articles IX and X. For instance, the terms determination and decision are distinguished and have precise meanings. A zoning officer's determination is appealable to the zoning hearing board for a decision or adjudication, which in turn is appealable to court. See, Appendix II – Pertinent Definitions.

One internal inconsistency surfaced from the Act 170 amendments dealing with jurisdiction and needs to be remedied by the General Assembly. A request for a special encroachment permit under an official map ordinance (Article IV) is appealable to the zoning hearing board according to MPC Section 405 rather than to court as previously required. However, new MPC Section 909.1 (b) gives exclusive jurisdiction to the governing body.

Validity Challenges

A landowner who desires to challenge the substantive validity of a land use ordinance has two choices. The first is a *curative amendment* which is heard by the governing body under MPC Sections 909.1 (b)(4), 609.1 and 916.1 (a)(2). The other choice is a *validity challenge* via the ZHB under authority of MPC Sections 909.1 (a)(1) and 916.1 (a)(1). A person aggrieved by a use or development permitted on the land of another who desires to challenge the substantive validity of the ordinance must submit the validity challenge to the ZHB. Curative amendments and validity challenges are essentially the same type of appeal with some minor procedural differences. Both the curative amendment and a validity challenge follow the procedures enumerated in Section 916.1.

A validity challenge must be in writing and contain reasons for the challenge, but unlike the curative amendment, no plans and explanatory materials describing the proposed use or development must be filed. If the ZHB finds that the validity challenge has merit, the decision must include recommended amendments to the challenged ordinance in order to cure the defects. The ZHB in reaching its decision must also consider five planning criteria enumerated in subsection (5) of Section 916.1 (c). In abbreviated terms, these five factors include:

(i) impact on roads and public facilities.

(ii) impact on regional housing needs and effectiveness of the proposal in providing affordable housing.

(iii) suitability of the site for the intensity of the use proposed by the site's soils, slopes, woodland, wetlands, flood plains, aquifers, and other natural features.

(iv) impact of the proposed use on the site's natural features.

(v) impact on preservation of agriculture and other land use which are essential to public health and welfare.

Although the board has the usual 45 days from the hearing or last hearing on the validity challenge to render its decision, a failure by the board results not in the usual deemed approval, but instead in a deemed denial. A deemed denial occurs on the 46th day after the close of the last hearing. A deemed denial also occurs with respect to a validity challenge if the hearing is not held within the obligatory 60 day time limit.

Act 127 of 2000 limited the number of landowner challenges on a property. A landowner cannot file simultaneously challenges for different uses on the same property. An original challenge must be finally determined

or withdrawn before a different challenge can be filed on the identical property. This limitation applies unless the municipality adopts a substantially new or different zoning ordinance text or map.

Multimunicipal and Joint Municipal Challenges

Since 1988, municipalities that plan and zone together enjoy collective protection against individual substantive challenges to the validity of the joint ordinance. That is, when challenged, the body hearing the challenge is required to consider the entire area subject to the joint plan and zoning ordinance. Now under Act 67 of 2000, municipalities that adopt a multimunicipal plan and enact generally consistent zoning provisions enjoy the same protection. That protection encompasses all of the advantages on doing things together. Regardless of the body hearing the challenge, they must consider the availability of uses under all zoning ordinances within the municipalities participating in the muntimunincipal comprehensive plan. This must be all done within a reasonable geographic area or to include the area covered by the joint panning and zoning arrangements.

Conflict of Interest

A general rule for a board member to follow is voluntary disqualification from any matter in which the member has a direct personal or financial interest. See, *Borough of Youngsville v. ZHB of Borough of Youngsville*, 69 Pa. Comm. Ct. 282, 450 A.2d 1086 (1982). A board member must be impartial. Also if a member has signed a petition opposing, for instance, a rezoning for a development, the member will not be able to hear the case if the matter reaches the board. Frederick H. Bair, Jr. writing in *The Zoning Board Manual* warns that board members should not express bias, prejudice or individual opinion on cases prior to hearing and pending a decision. The use of a hearing officer or an alternate member would be helpful in situations where a quorum cannot be obtained due to potential conflicts of interest.

ZHB members as public officials, whether compensated or not, are subject to the Pennsylvania Ethics Act (Act 1978-170 as amended by Act 9 of 1989). It would be appropriate for each board or member to have a copy of this law and the new regulations for reference as part of each ZHB kit or packet.

Fees

Provisions in the MPC prior to the Act 170 amendments were never clear regarding chargeable expenses for board hearings. The new provisions end the vagueness concerning chargeable fees and generally follow a line of court decisions on this topic. The governing body may prescribe reasonable fees which may include (1) compensation for the secretary and members of the ZHB, (2) notice and advertising costs and (3) necessary administrative overhead connected with the hearing.

An Act 170 amendment helps to further clarify the stenographic fee. The stenographer's appearance fee is to be shared equally by the applicant and the ZHB. However, transcription costs are paid by the party requesting a transcript, whether an original or a copy. In the case of an appeal, the cost of the transcript shall be paid by the party appealing the decision.

Fees may not include legal expenses of the ZHB, expenses for engineering, architectural, or other technical consultants or expert witness costs. However, fees should be reasonable and related to costs. A municipality cannot use its power to charge fees for the purpose of raising general revenues, or to frustrate or prevent zoning applications. Pertinent sections of the MPC concerning ZHB fees are 617.3 (e), 908 (1.1) and 908 (7).

According to Act 165 of 1996, the filing fee must be returned to the appealing party by the municipality where and when the party is appealing an enforcement notice and wins before the ZHB. The filing fee must be returned even if the appealing party loses before the ZHB, but prevails in a subsequent appeal to court. See, MPC Section 616.1(e), which became effective February 18, 1997.

Stenographic Record

The MPC in Section 908(7) continues to explicitly require a stenographic record in order for the courts to have a complete and accurate record in the event of an appeal. Commonwealth Court rulings indicate that transcripts should conform with transcripts in civil trials. See, *Appeal of Martin*, 33 Pa. Comm. Ct. 303, 381 A.2d 1321 (1978). If the record is inaccurate or incomplete, the ZHB runs the risk of a remand by the court for a rehearing.

ZHB Solicitor

Although there is no requirement that the ZHB must employ legal counsel, the ZHB would be operating at a distinct disadvantage without a solicitor. One of the primary roles of the ZHB solicitor is to advise the board during a hearing. The MPC permits the zoning hearing board to employ or contract for and fix the compensation of legal counsel, but such compensation and the sums expended for services shall not exceed the amount appropriated by the governing body for this use. See MPC Sections 617.3(c) and 907. However, this power to hire is not unilateral. Local government codes in boroughs and townships require the assent and ratification of the governing body.

The governing body should not dictate the choice of the solicitor for the ZHB because it would run counter to the MPC and be violative of the attorney-client relationship. While the governing body has the responsibility to budget and appropriate funds for the operation of the ZHB, the ZHB is also obligated to function within those financial limits. The situation is somewhat analogous to the Congress appropriating funds for the Supreme Court.

The MPC gives explicit direction that the legal counsel shall be an attorney other than the municipal solicitor. See MPC Section 617.3 (c). This legislative change by Act 170 followed a 1975 Pennsylvania Supreme Court ruling which concluded that the procedure where the same solicitor served both the municipality and the ZHB is susceptible to prejudice and therefore must be prohibited. See, *Horn v. Hilltown Twp.,* 461 Pa. 745, 337 A. 2d 858. In 1985, the Commonwealth Court went even further and ruled against the practice of allowing attorneys from the same law firm to serve in both adversary and adjudicative roles. See, *Sultanik v. Worcester Twp.,* 88 Pa. Comm. Ct. 214, 488 A. 2d 1197.

In 1991, the Pennsylvania Commonwealth Court rejected a developer's request for a deemed approval of his land development plan. The developer alleged a conflict of interest because the same solicitor represented both the zoning hearing board, where variances were first obtained, and then before the township supervisors, who eventually rejected the plan. It should be noted that the township (governing body) was not a party before the zoning hearing board and two separate proceedings took place. Furthermore, the solicitor was an advisor, not an advocate, in both proceedings. The solicitor refrained from acting as an advocate for either party in the proceeding before the other body. The court held that the potential for conflict of interest did not arise. Neither did the court mention or take notice of MPC Section 617.3(c). See, *Ball v. Montgomery Twp.*, 598 A. 2d 633.

Hearing Procedures

Hearings conducted by the board and decisions arrived at in any such hearing must be in accordance with the requirements of the MPC. Specifically, the requirements of Section 908 must be followed in this regard. The key provisions of Section 908 are explained below.

Notice

Notice of the hearing is now governed by the MPC definition of public notice, which was liberalized slightly by Act 170, but is more strict than the Sunshine Act's requirement. In addition to published notice, the board must provide written notice to the applicant, to the zoning officer, to any person who has requested notification, and to any other persons that the governing body has designated by ordinance. In addition, written notice of the hearing must be conspicuously posted on the affected tract of land at least one week prior to the hearing. See, MPC Section 908(1).

If the hearing is for a challenge to the validity of the ordinance, public notice must also include notice that the validity of the ordinance or map is in question, according to Section 916.1(e). In addition, the public notice must state where and at what times a copy of the challenge may be examined by the public.

Hearing Officer

The board or a member of the board appointed as a hearing officer must conduct the hearings. The decision or findings are usually made by the board. However, the appellant or the applicant, as the case may be, in addition to the municipality, may at the beginning of the hearing, agree to waive the decision or findings of the board and accept the decision or findings of the hearings officer as final. It is no longer necessary for all the parties to agree in advance to accept the hearing officer's decision as final. See, MPC Sections 908(2), (4), (8) and (9).

Parties and Standing

Parties to the hearing are the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person (including civic or community organizations) permitted to appear by the board. See, MPC Sections 908(3) and 913.3. The board does have the power to require that all persons who wish to become parties to the hearing enter an appearance* in writing on forms provided by the board. Parties have the right to be represented by counsel and are given the opportunity to respond, present evidence and cross-examine adverse witnesses on all relevant issues. Any tenant, with the permission of the landowner, may also file a request for a variance or a special exception, according to MPC Section 913.3.

A 1987 Commonwealth Court decision broadened standing and reversed decades of legal precedent. A landowner who is adversely affected by an application or permit may now have standing to appeal even if the property is located across or just beyond the municipal border. See, *Miller v. Upper Allen Township ZHB,* 112 Pa. Comm. Ct. 274, 535 A. 2d 1195 (1987).

Oaths

The chairman, acting chairman or hearing officer presiding over the hearing has the power to administer oaths and to issue subpoenas to compel both the attendance of witnesses and the production of relevant papers and documents. See, Section 908(4). However, the chairman does not have to issue a subpoena where the witnesses or materials requested are not shown to be relevant to the proceeding. All testimony should be sworn. Unsworn statements of opposing parties do not constitute legal evidence to make a record. See, *Appeal of Grace Building Co., Inc.,* 39 Pa. Comm. Ct. 552, 395 A. 2d 1049 (1979).

* An "appearance" is simply a form prepared by the board asking the person's name and address, whom he is representing, and whether or not he desires a copy of any final decision in the case at hand. This forms helps the board determine the person's interest in the matter and also gives an official record of whom a copy of any final decision must be sent.

Evidence

Since formal rules of evidence do not apply in hearings conducted by the board, irrelevant evidence could quite possibly be submitted. Therefore, the MPC, in Section 908(6) authorizes the board to exclude any such irrelevant, immaterial, or unduly repetitious evidence. Hearsay evidence, if not objected to, may be given its natural probative value. The board, as fact finder, has the power to reject even uncontradicted testimony if the board finds that testimony to be lacking in credibility.

An applicant is required at the time of the hearing to present evidence that it meets the requirements of the ordinance. It is not sufficient that an applicant promise it would come into compliance at a future date. Evidence is not a "promise." See *Edgmont Township v. Springton Lake,* 154 Pa. Commonwealth Ct. 76, 622 A.2d 418 (1993).

The General Assembly by Act 165 of 1996, clarified that in any appeal of an enforcement notice to the ZHB, the municipality has the responsibility of presenting its evidence first. See, MPC Section 616.1(d). Thus, unlike a special exception or variance case, the municipality has the obligation to commerce with the presentation of evidence.

Decision of the Board

Communications

In the time following the commencing of the hearing and prior to a rendering of the decision or findings, it is important that no communication be made with any party or the party's representatives unless all parties are given the opportunity to participate. Also, no communication, reports, staff memoranda, or other materials, except advice from the ZHB solicitor, should be accepted or noticed by the board unless all parties are given an opportunity to contest such communication or reports. Nor should the board inspect the site or its surroundings after the commencement of hearings with any party unless all parties are given an opportunity to be present at any on-site inspections. A copy of the zoning officer's report filed with the ZHB should also be provided to the other parties. See, MPC Section 908 (8).

Findings

Following the hearing on a case, a written decision or findings must be rendered within 45 days. Where an application is contested or denied, it must be accompanied by a finding of fact, the conclusions based on these facts, and the reason that such conclusions were drawn to show it was reasoned and not arbitrary. A reference to the provisions of any ordinance, rule or regulation relied on for any conclusion must be made along with the reason that the conclusion is appropriate for the particular case at hand. See MPC Section 908 (9).

It should be noted that the term "contested" as used above and in the second sentence of MPC Section 908(9) simply means that if anyone objects to the application at the ZHB hearing, then findings and conclusions must accompany the decision. It does not mean that an appeal must first be filed with the court.

Sometimes due to budget limitations, a ZHB may be tempted to cut corners or not issue the required findings of fact and conclusions of law with the belief that the decision may not be appealed. However, this practice puts the losing (or objecting) party at a disadvantage because it does not know for certain the legal basis for the decision and how to best formulate its appeal. To ensure due process, follow the MPC and include findings and conclusions unless the application is granted and nobody raises an objection.

Timeliness

Regardless of whether the board or a hearing officer hears the case, a written decision, or when no decision is called for; written findings must be made on the application within 45 days of the hearing or last hearing. However, where the hearing officer conducts the hearing and there has been no stipulation that his or her decision or findings are final, the board must make the hearing officer's report and recommendations available to the parties within 45 days. The board then has 30 days after issuance of the hearing officer's report to make a written decision.

Thus, where a hearing officer presides and the appellant or applicant and the municipality do not agree prior to the decision to accept the decision of the hearing officer as final, the process may be extended to a maximum of 75 days (45 + 30) from the date of the last hearing. The maximum theoretical time period for a final decision from the conclusion of the hearing would be increased from the normal 45 days by 30 days where the hearing officer's decision is not stipulated as final. See, MPC Section 908(9).

Deemed Decisions

If the board fails to hold a hearing within sixty days of the applicant's request for a hearing, or if a decision is not rendered within the required time period, a decision, called a deemed decision, is automatically rendered in favor of the applicant. However, the applicant can agree in writing or on the record to an extension of the time requirement.

The purpose of the harsh legislative requirement for a deemed approval is to assure timely decisions. The courts have not expanded deemed approvals to other procedural shortcomings such as a Sunshine Law violation or late mailing provided the decision was made on time.

A protestant or person aggrieved opposing a development is not considered an applicant for purposes of obtaining a deemed decision under MPC section 908(9). A protestant is not entitled to a deemed decision for the failure of the board to render a timely decision.

When a deemed decision occurs, the board must give public notice of the deemed decision within ten days from the last day it could have met to render a decision. Where the board fails to provide this public notice, the applicant may do so. This publication of public notice of the claim for a deemed decision triggers the start of the appeal period. Any objector or party opposing the application may still appeal. See, MPC Section 908(9).

There is one situation where the board has jurisdiction under MPC Section 909.1(a) where inaction results in a deemed denial instead of a deemed approval. If a landowner challenges the validity of the ordinance on substantive grounds and elects to file this validity challenge with the zoning hearing board instead of taking a curative amendment to the governing body, the validity challenge is deemed denied according to MPC Section 916.1(f) when:

(1) no hearing is held within 60 days.

(2) the zoning hearing board fails to act on the request within 45 days after the close of the last hearing.

Uncontested Cases

The MPC does not specifically require a decision granting an uncontested application to be accompanied by a statement of findings or an opinion. See, MPC Section 908(9). However, it would be prudent if a statement of findings or an opinion, whichever the case required, were written for each case before the board, and that it be sufficiently detailed to substantiate the board's decision. While it is true that there

may be no immediate need for this information, if in the future the board must explain its action in a particular case, without any written documentation there is no way of adequately outlining the details of the particular case and the findings or opinion of the board. Also, any floodplain variances even if uncontested, must be documented for administrative purposes.

Notice of Decision

According to MPC Section 908 (10), a copy of the final decision, or where no decision is called for, of the findings must be delivered to the applicant personally or must be mailed to him not later than the day after the date of the report. However, Commonwealth court has ruled that a deemed decision does not occur if the board's notice of decision is not mailed to the applicant by the next day provided the decision was made within 45 days of the hearing. See, *Heisterkamp v. ZHB of City of Lancaster,* 34 Pa. Comm. Ct. 539, 383 A. 2d 1311 (1978) which declared the day after mailing requirement to be directory rather than mandatory.

All other persons interested in the result of the case and who have filed an appearance must be provided a brief notice of the decision or findings with a statement of the place at which the full decision or findings may be examined. All other persons to which the brief notice or sentence or two describing the order applies presumably lack the official status as a party to the hearing. Perhaps, a distinction can be made where a party files an appearance, but all other persons (non-party status) are allowed to file their names and addresses to receive only a brief notice of the decision.

Tie Vote

A question sometimes occurs when the board is split either one to one, or two to two on a five member board. Case law indicates that when a judicial or semi-judicial body is equally divided, the subject matter with which it is dealing must remain in status quo. See, *Giant Food Stores, Inc. v. of Whitehall Twp.*, 93 Pa. Comm. Ct. 437, 501 A. 2d 353 (1985).

As an example, one lower court ruled that a special exception was denied where the board was evenly divided. Likewise, a denial would result on an appeal from a denial by the zoning officer in the event of a deadlock. However, if the appellant were a person aggrieved complaining of the issuance of a permit by the zoning officer, the effect of a tie vote would be to sustain the status-quo, that is, uphold the issuance of the permit.

Expiration of Approvals

Some zoning ordinances contain provisions which stipulate that a grant of a variance or special exception (or conditional use) will automatically expire within a reasonable period of time, such, as one or two years if a building permit has not been obtained and construction commenced. An expiration provision, it should be noted, runs with the land and should not be made personal to a given owner. If the zoning ordinance contains no time limitation and no time limitation was imposed by way of a condition, the ZHB approval can be exercised by a new owner years later.

However, Commonwealth Court has ruled that a reasonable time limitation may be amended into the zoning ordinance that would apply to previous grants of approvals. See *Pyle v. Municipality of Penn Hills*, 102 Pa. Comm. Ct. 220, 517 A. 2d 583 (1986). In this retroactive situation, the time limitation would commence on the effective date of the zoning amendment. Flexibility can also be drafted into the ordinance to allow the board to grant a time extension for good reason in order to avoid an automatic expiration and the subsequent need for the applicant to seek a new approval. A 1982 MPC amendment (Act 130) provided further protection of vested rights to a developer who obtains a special exception approval in order to proceed with a subdivision or land

development. See MPC Section 603(C)(2.1). Following special exception approval, the developer is entitled to at least 6 months in which to submit the subdivision or land development plan free of any intervening zoning changes (subsequent to the filing of the special exception application).

Continuances

A case should not be postponed to a later date without substantial or compelling reasons especially if the issue is of great concern and has attracted an audience. In such a situation, the board should try to proceed with the hearing if possible allowing the citizens to present their evidence and continue the hearing to another date. In a situation where a new issue is raised for the first time at the zoning hearing and the applicant had no notice of the issue, the applicant should be entitled to a chance to react to the issue via a continued hearing. A sample rule on continuance may be found in Appendix I at Section 6.14.

The Sunshine Act contains requirements for recessed or reconvened meetings. A notice must be prominently posted at the hearing site giving the place, date and time, and notice must also be given to the parties. The Sunshine Act also allows the audience to use recording devices.

Repetitive Applications (Rehearings)

Zoning is a type of continuing regulation, and flexibility in zoning outweighs the risk of repetitive litigation, according to Pennsylvania zoning expert Robert S. Ryan. Courts have emphasized the existence of changes in the facts as grounds for permitting repetitive or similar appeals. Because of the passage of time, it is easy to find changed circumstances such as increased traffic. See, *Church of the Savior v. ZHB of Tredyffrin Township* 130 Pa. Comm. Ct., 542, 568 A. 2d 1336 (1989), *Grim v. Borough of Boyertown*, Pa. Comm. Ct., 595 A. 2d 775 (1991).

However, some boards due to heavy case loads, stipulate that they will only accept a repetitive application or rehearing request if one year has expired since the prior denial. Also, the applicant may cite a different section of the ordinance espousing a different theory in support of an application.

The Pennsylvania Commonwealth Court addressed the issue of whether the grant of a variance which later expired is binding on a subsequent or repeat application. It ruled that the zoning hearing board does not abuse its discretion if it denies a second variance after expiration of the earlier variance. The court noted, "...any subsequent variance application, even one seeking the same variance for the same parcel of land, is a new application and the applicant must prove all elements necessary to the variance." See, *Omnivest v. Stewartstown Borough Z.H.B.*, 641 A.2d 648, at 652 (1994).

Withdrawals

If a controversial application is before the board, an applicant may try to wear down or frustrate a hostile audience by attempting to withdraw the application after the hearing begins. If withdrawal is permitted, care should be taken to re-advertise the notice before the application is reheard. Some ordinances permit withdrawals at any time, but stipulate if the withdrawal occurs after the board has convened the meeting, the same or substantially similar application may not be considered for a one year period from withdrawal.

Appeals to the Board

Appeals and proceedings to challenge an ordinance may be filed in writing with the board by the landowner, the municipality, or a person aggrieved. The MPC, however, specifically reserves requests for variances and

special exceptions to the landowner or to a tenant with the permission of the landowner. All appeals from determinations adverse to the landowners must be filed within 30 days after notice of the determination is issued.

Although many boards might not desire to declare a portion of their zoning ordinance invalid, the MPC grants the board the power to render final adjudications involving substantive challenges to the validity of any land use ordinance or map, the so called validity challenges. See, MPC Section 909.1(a)(1). Procedural challenges to the validity of a land use ordinance such as alleged defects in the process by which the ordinance was enacted go to the board instead of directly to court. See, MPC Section 909.1 (a)(2).

An aggrieved person has thirty days following approval of an application for development to file an appeal with the board. However, if a person alleges and proves that he had no notice, knowledge or reason to believe that such approval had been given, the appeal can be filed promptly after the aggrieved person learns of the decision, even if the 30 day time limit has expired. See, MPC Section 914.1.

The failure of anyone, other than the landowner, to appeal from an adverse decision on a tentative PRD plan or from an adverse preliminary opinion by the zoning officer on a challenge to the validity of an ordinance or map under MPC Section 916.2 precludes an appeal from a final approval. Of course, an exception exists in cases where the final submission substantially deviates from the approved tentative plan. See discussion of preliminary opinions in Planning Series No. 9, *The Zoning Officer*.

A question not squarely addressed by the MPC is whether a zoning hearing board has the power to issue an interpretation at a landowner's request. The Commonwealth Court answered that the board lacked jurisdiction to issue a purely advisory opinion. MPC Section 909.1(a) grants jurisdiction to hear and render final adjudications in several enumerated matters, but nowhere does the MPC empower a board to render an advisory opinion. See *Hopkins v. North Hopewell Township, Z.H.B.*, 154 Pa. Commonwealth Ct. 376, 623 A.2d 938 (1993).

Stay of Proceedings

An appeal to the board automatically stops all affected land development. However, if the zoning officer or other appropriate agency certifies that such a halt would cause an imminent danger to life or property, then the development may be stopped only by a restraining order granted by the zoning hearing board or by the court having jurisdiction, but following notice to the zoning officer or other appropriate body. See, MPC Section 915.1.

The also authorizes an applicant to petition the court that those contesting an authorized permit or approval either post bond or drop their appeal. Whether to grant the petition or not and the amount of the bond to be posted is decided by the court. An appeal on a frivolous matter is sometimes used to try to delay or kill a project. The court must hold a hearing to determine whether the appeal is frivolous. The burden is on the applicant for a bond, i.e., the developer, to prove that the appeal is frivolous. Only if the appeal is found to be frivolous will the stay be granted. An order denying a petition for bond and also an order granting the posting of bond are non-appealable.

If the respondent to the petition for a bond refuses to post bond as ordered by the court and appeals to an appellate court and loses, that party is then liable for all reasonable costs, expenses and attorney fees incurred by the petitioner for the bond.

Enforcement

The zoning hearing board has no enforcement powers or remedial powers. See, *In re Leopardi,* 516 Pa. 115, 532 A. 2d 311 (1987). Neither provisions of the MPC can be read as authorizing a zoning hearing board to initiate permit revocations. A zoning hearing board exists solely as an adjudicative body empowered to review matters brought to it under the respective provisions of the MPC. The zoning hearing board does not have any jurisdiction to act as an enforcement officer even with respect to its own previously issued approvals or conditions.

Landowners that violate specified conditions set by the zoning hearing board, the zoning officer should order compliance and, if deemed necessary, issue a notice of revocation for noncompliance with conditions. The landowners would then be entitled to file a timely appeal with the zoning hearing board for a hearing to decide whether landowners had violated conditions.

Mediation Option

Mediation, as defined by the MPC, is a voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement which the parties themselves create and consider acceptable. Parties to proceedings under the MPC may utilize the mediation option, but mediation is intended to supplement, not replace, procedures in Articles IX and X-A once they have been initiated. In no case may the ZHB initiate mediation or participate as a mediating party.

MPC Section 908.1 outlines the mediation option. Participation in mediation must be voluntary, and the parties must agree to:

(1) Funding.

(2) Selection of a mediator.

(3) Completion of mediation, including time limits for such completion.

(4) Suspension of time limits otherwise authorized by the MPC, provided there is written consent by the mediating parties, and by an applicant or municipal decision making body if either is not a party to the mediation.

(5) Identification of all parties.

(6) Determination of whether some or all sessions shall be open or closed.

(7) Issuance of mediation solutions in writing, subject to review and approval by the decision making body. No offers or statements made in the mediation sessions, excluding the final written mediated agreement, can be admissible as evidence in any subsequent judicial or administrative proceedings.

Mediation is envisioned as an aid or supplement in resolving land development and zoning (including PRD applications) disputes. Potential benefits include: (1) assistance in relieving an overburdened court system and support for encouraging out-of-court settlement; (2) providing a potentially less costly mechanism for resolving land use disputes; and (3) providing a less polarized process inherent in an adversarial administrative hearing or that legal proceedings create.

Appeals to Court

Act 170 of 1988 replaced Article X (Appeals) by a new Article X-A which addresses the issues of standing, jurisdiction, venue and procedure for an appeal of a land use ordinance decision to court. The distinction between Article X-A and new Article IX (Zoning Hearing Board and Other Administrative Proceedings) is that Article IX governs matters of administrative jurisdiction and appeals of determinations (as defined in Section 107 (b)) to local agencies. Article X-A governs all matters of appeal after a decision is made by local agencies on matters within their original administrative jurisdiction or matters which are appealed from such agencies for a decision. Only decisions are appealable to the courts.

The zoning hearing board has no standing to appeal a reversal of its decision by the county court to Commonwealth Court. In order for a municipality, that is the governing body, to appeal to Commonwealth Court, it must have intervened (or been a party) in county court.

Conclusion

The job of the zoning hearing board is obviously complex. However, it is a task necessary for proper administration of the zoning ordinance. The preceding pages have presented a basic overview of the zoning hearing board's functions in an attempt to help local officials better understand how a zoning hearing board operates.

Appendix I

Suggested Zoning Hearing Board Rules of Procedure and Bylaws

Article 1. General Provisions

1.1 The Zoning Hearing Board of_____shall be governed by the provisions of the Pennsylvania Municipalities Planning Code, the Zoning Ordinance and by these rules of procedure and bylaws.

1.2 The board shall become familiar with all other ordinances under which it may be expected to act as well as with applicable state statutes such as the and the Sunshine Law.

1.3 The board shall become familiar with the statement of community development objectives as contained within the zoning ordinance or stated by reference to the community comprehensive plan, and shall grant the minimum relief which will insure that the goals and objectives of the community are preserved and that substantial justice is done.

1.4 Nothing herein shall be construed to give or grant to the board the power or authority to alter or change the zoning ordinance, including the zoning map, which authority is reserved to the governing body.

1.5 Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services.

1.6 The legal counsel to the board shall be consulted in cases where the powers of the board are not clearly defined.

Article 2. Officers and Duties

2.1 ELECTION. The board shall, at its annual organizational* meeting, elect from its own membership, officers which shall consist of a chairman, a vice-chairman and may either elect a secretary, or appoint a non-member as secretary. These officers shall serve annual terms as such and may succeed themselves.

2.1 CHAIRMAN. The chairman shall perform all duties required by law, ordinance and these rules; shall preside at all meetings of the board; shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the board; shall appoint any committees found necessary to carry out the business of the board; and shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers. The chairman's signature shall be the official signature of the board and shall appear on all decisions as directed by the board.

2.3 VICE CHAIRMAN. The vice chairman, in the absence, disability or disqualification of the chairman, shall perform all the duties and exercise all the powers of the chairman.

* Organizational meetings are typically held on the first Monday of January, or the first Tuesday if the Monday falls on a holiday. However, practical considerations might dictate holding the board's organizational meeting at the first regular meeting in January. Terms of the office of members should be scheduled to expire on December 31.

2.4 SECRETARY. The secretary shall record and maintain permanent minutes of the board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact; shall keep records of the board's examinations and other official actions; shall cause to be made a stenographic record of all hearings, including the names and addresses of all persons appearing before the board; shall, subject to the board and the chairman, conduct the correspondence of the board; shall cause to be published, in a local newspaper, public notices of meetings or hearings as required by law and by these rules of procedures; shall cause to be conspicuously posted a written notice on the affected tract at least one week prior to the hearing; shall file board minutes and records in the municipal office, which minutes and records shall be a public record; and shall submit a report of the board's activities to the governing body once a year or as required by the governing body.

2.5 VACANCIES. The board shall promptly notify the governing body of any vacancies which occur. Should a vacancy occur among the officers of the board, such office shall be filled by election, for the unexpired term, at the next meeting of the full board.

2.6 ALTERNATE MEMBERS. When alternates have been appointed by resolution of the governing body, the chairman of the board shall designate as many alternates as necessary to reach a quorum. Designation of an alternate member shall be made on a case-by-case basis in rotation according to declining seniority. Once seated the alternate shall continue to serve on the board in all proceedings involving the matter or case for which the alternate was appointed until the board has made a decision on the case.

When an alternate has not been designated to sit by the chairman, the alternate may participate in any proceeding or discussion before the board but shall not vote or be compensated. Alternates shall hold no other office in the municipality, including membership on the planning commission and zoning officer.

Article 3. Meetings

3.1 REGULAR MEETINGS. The regular meeting of the board shall be held on the_____ day of each month at _____ p.m. at _____

3.2 ANNUAL MEETING. The annual organizational meeting of the board shall be the first regular meeting of the year.

3.3 SPECIAL MEETINGS. Special meetings may be called by the chairman at his discretion or upon the request of two other board members provided that public notice shall be given as required.

3.4 PUBLIC NOTICE. The board shall hold all meetings at specified times and places of which public notice shall be given.

(A) Public notice of the schedule of regular meetings shall be given once for each calendar year and shall show the regular dates, time and place at which meetings are held. This notice shall be given in a newspaper of general circulation within the municipality at least three (3) days prior to the time of the first regularly scheduled meeting.

(B) Public notice of each special meeting and of each rescheduled regular meeting shall be given in a newspaper of general circulation within the community at least twenty-four (24) hours prior to the time of the meeting.

3.5 QUORUM. A quorum shall be not less than a majority of all members of the board and is required for any decision, or official action by the board, except as modified herein.

3.6 CANCELLATION OF MEETINGS. Regular meetings may be by the chairman when there are no applications pending or other business to transact provided that twenty-four hour notice is given each member. As a courtesy to the public, a notice of such cancellation shall be posted at the place of the meeting.

Article 4. Order of Business

4.1 PROCEEDINGS. All meetings of the board shall proceed as follows:

(A) Meeting called to order

(B) Roll call and declaration of quorum

(C) Reading and approval of minutes

(D) Voting and announcement of outstanding decisions

(E) Continued hearings

(F) Hearing of cases

(G) Unfinished business

(H) New business

(I) Adjournment.

Article 5. Board's Functions

5.1 The board shall have exclusive jurisdiction to hear and render final adjudications in matters authorized by MPC Section 909.1(a) Jurisdiction. As specified in the MPC, the board has nine functions:

(A) Substantive challenges to the validity of any land use ordinance, except a curative amendment.

(B) Procedural challenges on land use ordinances.

(C) Appeals from the determination of the zoning officer, including but not limited to,

(i) the granting or denial of any permit, or failure to act on the application.

(ii) the issuance of any cease and desist order.

(iii) the registration or refusal to register any nonconforming use, structure or lot.

(D) Appeals from determinations by the municipal engineer or zoning officer with respect to floodplain ordinances or provisions.

(E) Variances.

(F) Special exceptions.

(G) Appeals from determinations in the administration of transfers of development rights or performance density provisions.

(H) Appeals from the zoning officer's determination of a preliminary opinion under Section 916.2.

(I) Appeals from determinations by the zoning officer or engineer regarding sedimentation and erosion control or storm water management not involving Article V or Article VII applications.

Article 6. Hearings

6.1 INITIATING ACTION BEFORE THE BOARD. All action before the board shall be initiated by a written application for hearing which shall be filed with the zoning officer at least three weeks prior to the meeting at which the matter is to be heard. All applications shall be made on forms specified by the board. No application shall be accepted unless the same shall be fully and legibly completed and unless all exhibits and supplemental material required by the application shall be attached and until all fees required shall have been paid.

6.2 TIME LIMITATIONS.

(A) Landowner Appeals. All appeals from determinations adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

(B) Appeal of Persons Aggrieved - No person shall be allowed to file any proceeding with the board later than thirty (30) days after an application for development, preliminary or final, has been approved by the appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.

A person aggrieved may not appeal a final approval on a tentative plan pursuant to Section 709 or preliminary opinion of the zoning officer under MPC Section 916.2, unless the final submission substantially deviates from the approved tentative approval.

6.3 HEARING SCHEDULE. The board may conduct hearings and make decisions at any regular or special meeting. In no instance will a hearing be scheduled later than sixty (60) days from the date of the applicant's request for a hearing, unless the applicant has agreed in writing to an extension of time.

6.4 NOTIFICATION OF HEARING.

(A) Whenever a hearing has been scheduled, public notice shall be given to the general public by means of publication once each week for two successive weeks in a newspaper of general circulation with the community. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered. The first publication shall not be more than thirty (30) days and the second publication shall not be less than seven (7) days prior to the date of the hearing.

(B) Written notice shall be given to the applicant, the municipal planning commission, the zoning officer and to any person who has made timely request for such notice.

(C) In addition to the notice provided herein, the zoning officer shall conspicuously post notice of said hearing on the affected tract of land no less than seven (7) days prior to the date of the hearing.

6.5 CONDUCT OF HEARING. The hearing shall be conducted by the zoning hearing board or the board may appoint any member as a hearing officer. The decision, or where no decision is called for, the findings, shall be made by the board, but the appellant or the applicant, as the case may be, in addition to the municipality, may waive the decision or findings by the board and accept the decision or findings of the hearing officer as final.

6.6 ORDER OF HEARING.

(A) Hearing called to order.

(B) Chairman's statement of reason for hearing.

(C) Chairman's statement of parties to hearing.

(D) Identification of other parties wishing to be heard.

(E) Outline of procedures to be followed during hearing.

(F) Applicant's presentation of their case.*

(1) Objectors cross-examine applicant's witnesses.

(2) Board cross-examines applicant's witnesses.

(G) Statement of the Zoning Officer.*

(1) Applicant's cross-examination.

(2) Objector's cross-examination.

(3) Board's cross-examination.

(H) Objector's presentation of their case.

(1) Applicant cross-examines objector's witnesses.

(2) Board cross-examines objector's witnesses.

(I) Other testimony and evidence.

(J) Rebuttal by applicant.

(K) Rebuttal by objectors.

(L) Concluding remarks and notice of when decision is expected to be made.

(M) Adjournment of hearing.

6.7 RECORD. The board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. A transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.

6.8 PARTIES. The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or community organizations permitted to appear by the board. All persons who wish to be considered parties shall enter appearances in writing on forms provided by the board for that purpose. Persons aggrieved shall not be denied standing because they do not reside nor have a property interest within the municipal boundaries.

6.9 REPRESENTATION. All parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument, and to cross-examine adverse witnesses on all relevant issues.

6.10 WITNESSES. All witnesses shall testify under oath.

6.11 EVIDENCE. The board shall not be bound by strict rules of evidence, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The chairman, or hearing officer, as the case may be shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the board.

NOTE: In any appeal of an enforcement notice the order of F and G must be reversed. In an appeal of an enforcement notice Act 165 of 1996 stipulates that the municipality shall have the responsibility of presenting its evidence first.

6.12 COMMUNICATION. The board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials except advice from the solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.

6.13 DECISIONS.

(A) The board or the hearing officer, as the case may be, shall render a written decision or when no decision is called for, make written findings within 45 days after the last hearing before the board or hearing officer.

(B) If the hearing is conducted by a hearing officer, and there has been no stipulation by the appellant or the applicant and the municipality that the hearing officer's decision or findings are final, the board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the board prior to final decision or entry of findings. The board's decision shall be entered no later than 30 days after the report of the hearing officer.

(C) The board shall conduct its deliberations and vote on all matters in public session at the meeting in which evidence is concluded. If additional time for deliberation is necessary, the board shall reschedule the deliberations to a date within the allotted 45 day time limit.

(D) All matters shall be decided by a roll call vote. Decisions on any matter before the board shall require the affirmative vote of those present and voting unless otherwise specified herein.

(E) No member of the board shall sit in hearing or vote on any matter in which he is personally or financially interested. Said member **shall not**be counted by the board in establishing the quorum for such matters, i.e. for a three member board, if one member removes himself, two members are still required for a quorum.

(F) No member of the board shall vote on the adjudication of any matter unless he has attended the public hearing thereon.

(G) A tie vote shall be considered a rejection of the application under consideration. However, if a person aggrieved has appealed the grant of a permit or approval, a tie vote upholds the prior approval.

(H) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following its date. The board shall provide by mail or otherwise, to all other persons who have filed their name and address with the board, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

6.14 CONTINUANCES. On its own motion, or on approval of requests by applicant, appellants or their authorized agents, the board may provide for later continuances of cases on which hearings have begun. Such continuances shall be permitted only for good cause, stated in the motion, and, unless time and place is stated, shall require new public notice, with fees paid by applicants or appellants if continuances are at their request or result from their actions.

A notice of the place, date and time of the continued hearing shall also be posted prominently at the municipal office where the hearing will be continued.

6.15 FAILURE TO HOLD HEARING OR RENDER DECISION. Where the board fails to render a decision within the period required, or fails to hold a hearing within the period required, the decision shall be deemed to have been rendered in favor of the applicant unless otherwise specified in the . However, failure to act on a validity challenge results in a deemed denial. When a decision has been rendered in favor of the applicant because of the failure of the board to meet or render a decision, the board shall give public notice of deemed approval within 10 days from the last day it could have met to render a decision in the same manner as in Section 6.4(A).

6.16 RECONSIDERATION. Once an application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the board, except that the applicant may reapply based upon new evidence that substantially alters conditions of the petition.[1]

Article 7. Appeals

7.1 The procedure set forth in Article X-A of the Pennsylvania Municipalities Planning Code and in the Judiciary Act Repealer Act shall constitute the exclusive mode of appeal from any decision of the Zoning Hearing Board.

Article 8. Adoption and Amendment of Rules

8.1 These rules shall be adopted and may be amended by an affirmative majority vote of all members of the board.

8.2 Any proposed amendment must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

The foregoing rules or procedure and bylaws are hereby adopted, by the Zoning Hearing Board of _____ , Pennsylvania on _____ , 19_____ .

_____
Chairman

_____
Secretary

*Note: A zoning hearing board has no power to reconsider a decision. See, Grand Central Sanitary Landfill v. ZHB of Plainfield Township, 155 Pa. Commonwealth Ct. 273, 625 A.2d 115 (1993).

Appendix II

Pertinent Definitions

Section 107(a):

Public hearing a formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment, prior to taking action in accordance with this act.

Public meeting a forum held pursuant to notice under the act of July 3, 1986 (P.L. 388, No. 84), known as the Sunshine Act.

Public notice notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing.

Section 107(b):

The following words and phrases when used in Articles IX and X-A shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

Board any body granted jurisdiction under a land use ordinance or under this act to render final adjudications.

Decision final adjudication of any board or other body granted jurisdiction under any land use ordinance or this act to do so, either by reason of the grant of exclusive jurisdiction or by reason of appeals from determinations. All decisions shall be appealable to the court of common pleas of the county and judicial district wherein the municipality lies.

Determination final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder, except the following:

(1) the governing body.

(2) the zoning hearing board.

(3) the planning agency, only if and to the extent the planning agency is charged with final decision on preliminary or final plans under the subdivision and land development ordinance or planned residential development provisions.

Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal.

Hearing an administrative proceeding conducted by a board pursuant to section 909.1.

Land use ordinance any ordinance or map adopted pursuant to the authority granted in Articles IV, V, VI and VII.

Report any letter, review, memorandum, compilation or similar writing made by any body, board, officer or consultant other than a solicitor to any other body, board, officer or consultant for the purpose of assisting the recipient of such report in the rendering of any decision or determination. All reports shall be deemed recommendatory and advisory only and shall not be binding upon the recipient, board, officer, body or agency, nor

shall any appeal lie therefrom. Any report used, received or considered by the body, board, officer or agency rendering a determination or decision shall be made available for inspection to the applicant and all other parties to any proceeding upon request, and copies thereof shall be provided at cost of reproduction.

Selected Definitions from the Sunshine Act (Act 84 of 1986):

Deliberation the discussion of agency business held for the purpose of making a decision.

Meeting any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.

Official action

(1) Recommendations made by an agency pursuant to statute, ordinance or executive order.

(2) The establishment of policy by an agency.

(3) The decisions on agency business made by an agency.

(4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

Special meeting a meeting scheduled by an agency after the agency's regular schedule of meetings has been established.

Appendix III

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

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

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

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

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

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

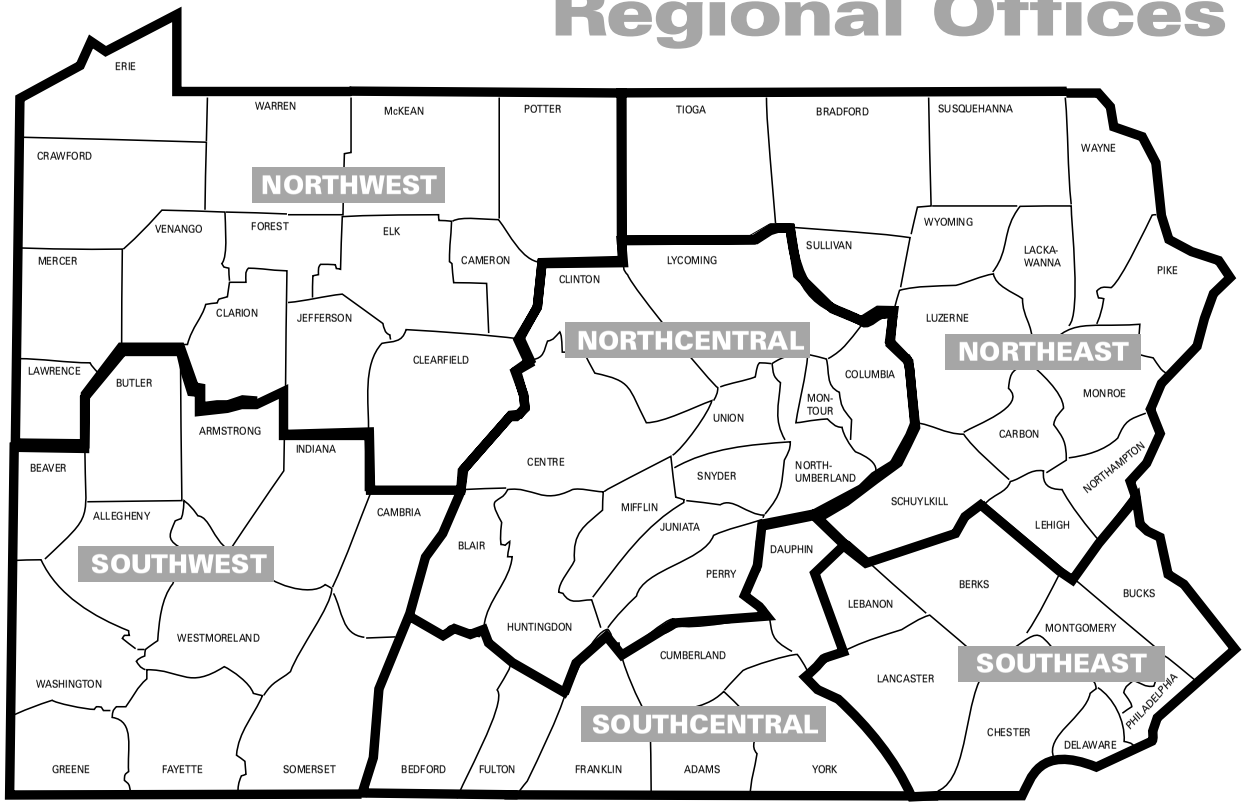
The courses offered by PSAB are directed primarily at economic development and downtown revitalization efforts as alternatives to sprawl. The courses PSATS offers focus on best practices and conservation. The primary audience for education and training programs is local government officials, however,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

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

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

Governor's Center for Local Government Services

Regional Offices



Southwest
Michael S. Foreman
(412) 565-5199
William D. Gamble
(412) 565-2552
Keith C. Robb
(412) 565-2361
Governor's SW Regional Office
1403A State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Fax: (412) 565-7983

Northwest
Samuel Wagner
(814) 871-4189
Tony Mottle
(814) 871-4191
Governor's NW Regional Office
100 State Street, Suite 202
Erie, PA 16507
Fax: (814) 871-4896

Southcentral
Mitch Hoffman
Governor's SC Regional Office
4th Floor, Commonwealth
Keystone Building
Harrisburg, PA 17120-0225
(888) 223-6837
Fax: (717) 783-1402

Northcentral
Kenneth P. Johnson
Governor's NC Regional Office
4th Floor, Commonwealth
Keystone Building
Harrisburg, PA 17120-0225
(570) 742-2107
Fax: (717) 783-1402

Southeast
Bruce Fosselman
Governor's SE Regional Office
Bellevue
200 South Broad Street, 11th Floor
Philadelphia, PA 19102
(215) 560-2374 or (610) 530-8223
Fax: (215) 560-3458 or (610) 530-5596

Northeast
Joseph Krumsky
Governor's NE Regional Office
4184 Dorney Park Road, Suite 101
Allentown, PA 18014
(610) 530-5718
Fax: (610) 530-5596

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

USPS 100
APPROVED POLY

pennsylvania
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT