Pennsylvania Municipalities Planning Code Recodification & Amendments 1988-2005

Historical Development and Commentary on Amendments

(replacing previous editions in 1989, 1993, and 2000)

Local Government Commission
General Assembly of the Commonwealth of Pennsylvania
Harrisburg, Pennsylvania

January 2006

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Local Government Commission

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[1] 46 P.S. § 431.1 et seq.

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Abbreviations, Acronyms, Signals, Symbols, and Legal Terms

A.	Atlantic Reporter
ab initio	from the beginning[1]
affirmed	to confirm (a judgment) on appeal[1]
AICP	American Institute of Certified Planners
allocatur	permission to appeal (in Pennsylvania)[1]
amends.	amendments
Art.; art.	Article; article
[ ]-brackets	alteration in citation; establishing short citation[2]
But see	Cited authority clearly supports a proposition contrary to the main proposition.[2]
cert.	abbreviation for "certiorari"; an extraordinary writ issued, in Pennsylvania, by a federal appellate court, at its discretion, directing a lower court to deliver the record in a case for review; also termed *writ of certiorari*[1]
Ch.	Chapter
Const.	Constitution
d	edition (e.g., 2d)
Dec.	December
Def.	Definition
de facto	actual; existing in fact; having effect even though not formally or legally recognized[1]
de minimis	trifling; minimal; (of a fact or thing) so insignificant that a court may overlook it in deciding an issue or case[1]
e.g.	for example
Esq.	Esquire
et al.	abbreviation for "*et alia*"; and others
et seq.	and those (pages or sections) that follow[1]
ex officio	by virtue or because of an office; by virtue of the authority implied by office[1]
Hdg.	Heading
hearing de novo	a reviewing court's decision of a matter anew, giving no deference to a lower court's findings; a new hearing of a matter, conducted as if the original hearing had not taken place[1]
id.	reference to the authority cited immediately before[1]
i.e.	that is[1]
infra	citational signal to reference a later-cited authority[1]

[1] Bryan A. Garner (ed.), *Black's Law Dictionary,* 7th ed., West Group, St. Paul, Minn., 1999.

[2] Editors of the Columbia Law Review, the Harvard Law Review, the University of Pennsylvania Law Review, and The Yale Law Journal, *The Bluebook, A Uniform System of Citation,* 16th ed., The Harvard Law Review Association, Cambridge, Mass., 1996.

Inc.	Incorporated
in re	not including adverse parties, but rather concerning something; often in case law citations, especially in uncontested proceedings[3]
Intro.	Introductory
Jan.	January
MPC	Pennsylvania Municipalities Planning Code
MSA	metropolitan statistical area
n.	note
No.	Number
Nov.	November
nunc pro tunc	having retroactive legal effect through a court's inherent power[3]
Oct.	October
p.	page
Pa.	Pennsylvania; Pennsylvania State [Supreme Court] Reports[4]
Pa. Cmwlth.	Pennsylvania Commonwealth Court Reports[4]
Pa.C.S.	Pennsylvania Consolidated Statutes
Pa. D. & C.	Pennsylvania District and County Reports[4]
par.	paragraph
Pa. Super.	Pennsylvania Superior Court Reports[4]
per se	of, in, or by itself; standing alone without reference to additional facts[3]
P.L.	Pamphlet Law
PRD	planned residential development
pro tanto	to that extent; for so much; as far as it goes[3]
P.S.	Purdon's Pennsylvania Statutes
Pt.	Part
P.U.C.	Pennsylvania Public Utility Commission
reargument	presentation of additional arguments, which may suggest that a controlling legal principle was overlooked, to usually an appellate court that already heard initial arguments[3]
§; §§	Section; Sections
See	Cited authority clearly supports the proposition.[4]
See also	Cited authority provides additional source information that supports the proposition.[4]
See, e.g.,	Cited authority states the proposition.[4]
Sec.	Section
Sp. Sess.	Special Session
Subch.	Subchapter
sub nom.	abbreviation for "*sub nominee*," meaning "under the name"; often used to indicate a name change from one stage of a case to another[3]
Subpt.	Subpart
supra	citational signal to reference a previously cited authority[3]
TDR	transferable development right
U.S.	United States; United States [Supreme Court] Reports[4]
v.	versus
writ of certiorari	*See* definition of "cert." on page ix.

[3] Garner, *supra,* note 1, p. ix.

[4] Editors of the Columbia Law Review, et al., *supra,* note 2, p. ix.

Preface

This publication, *Pennsylvania Municipalities Planning Code Recodification & Amendments 1988-2005*, is a review and commentary of Act 170 of 1988 and amendments to the Pennsylvania Municipalities Planning Code (MPC) through 2005. It consolidates and replaces the Local Government Commission publications: *Municipalities Planning Code 1990-2000, A Decade of Amendments to the Pennsylvania Municipalities Planning Code; 1993 Edition of Analysis of Revisions to the Pennsylvania Municipalities Planning Code;* and the initial *Analysis of Revisions to the Pennsylvania Municipalities Planning Code* published in 1989.

Due to the complexity of the statutory language, this document simply contains a review of the MPC amendments as construed by the Commission staff with input from 1980s MPC Task Force members and other individuals as have been acknowledged. Because differing views of various provisions will undoubtedly exist, the Commission urges readers of this publication to exercise caution in the interpretation of this statute. All questions regarding the contents of this document should be directed to Michael P. Gasbarre, Executive Director of the Local Government Commission.

Acknowledgements[1]

The Commission extends its thanks to the sizable cadre of individuals who, through offering numerous constructive criticisms, comments, and suggestions, greatly contributed to various editions of this undertaking. Although they bear no responsibility for the Commission's interpretations, they truly helped to make this analysis a better document.

Analysis of Revisions to the Pennsylvania Municipalities Planning Code (1989 Edition)

The initial edition of this publication was based on the work of the MPC Task Force, which was organized by the Local Government Commission to study the statute.

General Assembly Task Force Members

Senator Tim Shaffer, Chairman of the Task Force
Senator J. Doyle Corman (ex officio), Chairman of the Commission
Representative Joseph Levi II
Representative David W. Sweet

Other Task Force Members

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Ronald J. Mull, Pennsylvania State Association of Township Commissioners
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[1] Task Force Members and other individuals whose assistance is acknowledged are identified as Members of the Local Government Commission or the General Assembly or by position or affiliation at the time of the respective publication.

Ex Officio Task Force Members

Chris Allen, Pennsylvania Farmer's Association (original Task Force member)
Wendy Emrich, Brandywine Conservancy
Stephen Fehr, Pennsylvania Department of Community Affairs
Irving Hand, The Pennsylvania State University Harrisburg, The Capital College
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David Sweet, Brandywine Conservancy

Analysis of Revisions to the Pennsylvania Municipalities Planning Code (1993 Edition)

The Commission acknowledges and extends its sincere appreciation to four individuals who collectively acted as an informal advisory or overview committee in the preparation of the 1993 edition:

Ronald Agulnick, Esq., Home Builders Association of Chester and Delaware Counties and Regional Legislative Officer for the Southeast Region of Pennsylvania Builders
Richard G. Bickel, AICP, Pennsylvania Planning Association
Stephen Fehr, Pennsylvania Department of Community Affairs
Robert S. Ryan, Esq., Author, *Pennsylvania Zoning Law and Practice*

Their reviews and critiques of the working drafts were invaluable, as were their translations of the technical terminology of land use planning into understandable language. The value of this *Analysis* has been greatly enhanced by their contributions.

Municipalities Planning Code 1990-2000 A Decade of Amendments to the Pennsylvania Municipalities Planning Code

The Commission gratefully acknowledges the assistance of the following persons in reviewing and commenting on the 2000 edition:

John J. Bell, Pennsylvania Farm Bureau
Richard G. Bickel, AICP, Pennsylvania Planning Association
Anna M. Breinich, AICP, Pennsylvania Environmental Council
Thomas S. Buzby, Hardwood Lumber Manufacturers Association
Loudon Campbell, Eckert Seamans Cherin & Mellott, LLC
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Pennsylvania Department of Community and Economic Development
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Pennsylvania Municipalities Planning Code Recodification & Amendments 1988-2005

The Commission extends its sincere thanks to the following individuals for reviewing and commenting on the 2006 edition:

Richard G. Bickel, AICP, Pennsylvania Planning Association
Philip E. Robbins, Governor's Center for Local Government Services,
Pennsylvania Department of Community and Economic Development

Commission legal counsel also were instrumental in conducting technical reviews, as well as making substantive contributions, to the successive editions of this document.

Chapter 1

Introduction

The Pennsylvania Municipalities Planning Code (MPC)[1] establishes the basic framework for a municipality in Pennsylvania to plan for community development through the preparation of a comprehensive plan. Moreover, the MPC permits a municipality to further govern development locally through both a zoning ordinance and a subdivision and land development ordinance.

With the exception of amendments in 1972, 1978, and 1982, the MPC, as adopted in 1968, essentially met with relatively minor legislative reshaping until the enactment of Act 170 of 1988. From 1988 through 2005, the MPC has been amended 14 times, as enumerated below, with the most extensive amendments having been made by Act 209 of 1990, which provided for transportation impact fees, and by Act 67 and Act 68 of 2000, which sometimes are referenced as the "growing smarter" legislation.[2]

However, even during periods when the statute itself remained comparatively static, an enormous volume of case law was generated by litigation over the many diverse issues regulated by the MPC. One need only look to the MPC in Title 53 of Purdon's Pennsylvania Statutes Annotated[3] to readily see the numerous annotations of common pleas and appellate court decisions related to the MPC.

The following pages of this publication embody 14 amendments to the MPC, starting with its recodification and amendments in 1988:[4]

- The act of December 21, 1988, P.L. 1329, No. 170 (Senate Bill 535, Printer's Number 2556), cited as "Act 170 of 1988" or "1988-170."
- The act of December 19, 1990, P.L. 1343, No. 209 (House Bill 1361, Printer's Number 4295), cited as "Act 209 of 1990" or "1990-209."
- The act of December 14, 1992, P.L. 815, No. 131, (Senate Bill 1505, Printer's Number 2636), cited as "Act 131 of 1992" or "1992-131."
- The act of May 27, 1994, P.L. 251, No. 38 (House Bill 1760, Printer's Number 3390), cited as "Act 38 of 1994" or "1994-38."
- The act of December 18, 1996, P.L. 1102, No. 165 (Senate Bill 1197, Printer's Number 2448), cited as "Act 165 of 1996" or "1996-165."

[1] The act of July 31, 1968, P.L. 805, No. 247.

[2] The backgrounds of Act 209 and Act 67 are discussed in the introductions to Articles V-A and XI, respectively, in Chapter 3, since those acts added or totally revised the subject articles. However, Act 68 made amendments throughout the MPC, so the summary of its legislative history is provided along with the chronological summary in the following chapter of this publication.

[3] 53 P.S. § 10101, et seq.

[4] A list of statutes that amended the MPC since its enactment is provided in the Appendix of this publication.

- The act of October 16, 1998, P.L. 782, No. 97 (House Bill 591, Printer's Number 2587), cited as "Act 97 of 1998" or "1998-97."
- The act of June 18, 1999, P.L. 70, No. 10 (House Bill 1335, Printer's Number 1582), cited as "Act 10 of 1999" or "1999-10."
- The act of June 22, 2000, P.L. 483, No. 67 (House Bill 14, Printer's Number 3711), cited as "Act 67 of 2000" or "2000-67."
- The act of June 22, 2000, P.L. 495, No. 68 (Senate Bill 300, Printer's Number 2058), cited as "Act 68 of 2000" or "2000-68."
- The act of December 20, 2000, P.L. 940, No. 127 (House Bill 1604, Printer's Number 4070), cited as "Act 127 of 2000" or "2000-127."
- The act of January 11, 2002, P.L. 13, No. 2 (House Bill 1219, Printer's Number 3066), cited as "Act 2 of 2002" or "2002-2."
- The act of May 9, 2002, P.L. 305, No. 43 (House Bill 411, Printer's Number 3792), cited as "Act 43 of 2002" or "2002-43."
- The act of December 9, 2002, P.L. 1705, No. 215 (Senate Bill 1452, Printer's Number 2439).[5]
- The act of November 19, 2004, P.L. 831, No. 99 (House Bill 796, Printer's Number 4409), cited as "Act 99 of 2004" or "2004-99."
- The act of November 30, 2004, P.L. 1613, No. 206 (Senate Bill 892, Printer's Number 1785), cited as "Act 206 of 2004" or "2004-206."

In order to provide the reader with a better understanding of these amendments, this publication considers them from two overlapping vantage points: (1) through a chronological summary (Chapter 2); and (2) on the basis of how particular articles and sections of the MPC have been affected (Chapter 3). The latter chapter provides more detail and identifies changes under each section heading. To the extent that court decisions may have been influential, an additional commentary may follow briefly citing and discussing individual cases. Likewise, in the event that some aspect of legislative intent or legislative history is relevant to the understanding of a particular article or section, the analysis may also comment on those matters.

[5] Act 215 of 2002, in essence, *replaces* Section 909.1(a)(2) of the MPC with the amendment of Title 42 of the Pennsylvania Consolidated Statutes (Pa.C.S.) (Judiciary and Judicial Procedure), Section 5571(c)(5), which requires that a procedural challenge be brought within 30 days of the "intended effective date" of the ordinance, resolution, map, or similar action; "intended effective date" is defined in the amendatory language. Act 215 does not modify the MPC, per se, but it legally applies "notwithstanding section 909.1(a)(2)." *See infra* Chapter 3, Article IX (Zoning Hearing Board and other Administrative Proceedings), note 2, p. 99.

Chapter 2

Chronological Summary of Amendments

1988 Recodification and Comprehensive Amendments

In 1981, the Local Government Commission organized a Task Force to undertake a section-by-section review of the MPC. The Task Force's primary objective was not to revolutionize planning, but rather to revise the MPC by removing inconsistencies, clarifying ambiguities, and standardizing procedures. Commission staff and Task Force members also analyzed relevant judicial decisions concerning the MPC to avoid unnecessary conflict with existing land use law. The report of the Task Force initially was embodied in Senate Bill 1168, which was introduced in 1983, but not enacted in the 1983-84 Legislative Session.

After three legislative sessions, the Task Force recommendations were again introduced as Senate Bill 535 of 1987, and adopted as Act 170 of 1988, reflecting years of negotiation and compromise. Signed by the Governor on December 21, 1988, Act 170 took effect 60 days thereafter. This reenactment and amendment of the MPC have provided the guidelines for land use regulation by municipalities in Pennsylvania. Because of their extensive and comprehensive nature, the Act 170 amendments to the MPC are not discussed in this chapter's chronological summary, but are summarized in the section-by-section analysis of Chapter 3.

1990 Impact Fees

Act 209 of 1990 amended the MPC by adding extensive provisions authorizing the imposition of defined impact fees by municipalities for the purpose of financing off-site capital improvements (highway only) necessitated by and attributable to new development.

Before charging an impact fee, a municipality would have to adopt either its own or the county comprehensive plan, a subdivision and land development ordinance, and a zoning ordinance. The act requires that an advisory committee be created to assist in the development of land use assumptions, the preparation of a roadway sufficiency analysis, and the establishment of a transportation capital improvements plan.

The act specifies a formula for the determination of impact fees, which must be levied by ordinance. Impact fees so levied must benefit a transportation service area (no larger than seven square miles) designated by the capital improvements plan. In addition, a municipality is prohibited from requiring, as a condition of a land development or subdivision application approval, the dedication of off-site improvements or capital expenditures, contributions, exactions, or any other fee, unless expressly authorized. The act further includes a provision for appeals, enumerates prerequisites for assessing sewer and water tapping fees, and makes repeals.

1992 Allegheny County Forestry Transferable Development Rights

Act 131 of 1992 made several unrelated amendments to the MPC. It amends various definitions to add counties of the second class (Allegheny County) to those municipalities that are empowered under the MPC.[1] It prohibits municipalities from enacting zoning ordinances that unreasonably restrict forestry activities.[2] This act also specifies that, in the case of a joint municipal zoning ordinance between two or more municipalities which have adopted a program of transferable development rights (TDRs), such development rights shall be transferable within and between the boundaries of those municipalities.

1994 Forestry Posting Requirements

Act 38 of 1994 amended the MPC by adding the definition of "forestry," which is stated to be the "management of forests and timberlands . . . which does not involve any land development."[3]

[1] With regard to Allegheny County, it may be that Section 103 (Construction of Act) inadvertently was left unchanged. This section continues to read, in part: "The provisions of other acts relating to municipalities other than cities of the first and second class and counties of the second class are made a part of this act and this code shall be construed to give effect to all provisions of other acts not specifically repealed."

[2] *See* Act 38 of 1994, which defines "forestry" to supplement Act 131 of 1992. Also, Act 68 of 2000 provides further protection for forestry.

[3] 53 P.S. § 10107. The MPC defines "land development" as any of the following activities:

(1) The improvement of one lot or two or more contiguous lots, tracts, or parcels of land for any purpose involving:

  (i) a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or

  (ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of or for the purpose of streets, common areas, leaseholds, condominiums, building groups, or other features.

(2) A subdivision of land.

(3) Development in accordance with Section 503(1.1).

This definition was added to establish the meaning of forestry and to clarify that the use of land solely for forestry is not a land development or subdivision activity, which may be subject to regulation under Article V. This amendatory act also provided that, before having the required public hearing on a zoning ordinance amendment that involves a zoning map change, it is no longer necessary to post the entire perimeter of the affected tract, so long as notice is conspicuously posted at points deemed sufficient by the municipality to give notice of the hearing to interested citizens.[4]

1996 Landscape Architects Presenting Evidence Return of Fees Written Decisions

Act 165 of 1996 amended the MPC to allow landscape architects to prepare plats in conformance with a municipal subdivision or land development ordinance.[5] The act also requires that municipalities present evidence first in any appeal of an enforcement notice to the zoning hearing board. In addition, it provides for the return by the municipality of any filing fee to a party to an appeal if the board, or subsequently a court, rules in the party's favor. Finally, the act further provides for written decisions or written findings by a governing body within 45 days of the last hearing on a conditional use application.

1998 Time Frame for Adopting a Joint Municipal Curative Amendment

Act 97 of 1998 amended the MPC as follows: (1) it extends the time frame for the adoption of a curative amendment by two or three municipalities which have adopted a joint zoning ordinance to nine months; and (2) it extends the time period for enactment of the amendment by one additional month for each municipality in excess of three that is a party to the ordinance; however, in any case, the municipalities must enact the amendment no later than one year from the date of declaration of partial or total invalidity.

[4] Prior to this amendment to the MPC, the case of *Johnson v. Zoning Hearing Board of Stroud Township,* 144 Pa. Cmwlth. 479, 601 A.2d 927 (1992), *appeal denied,* 532 Pa. 648, 614 A.2d 1144 (1992), invalidated an enacted zoning amendment for failure to post notice of the proposed amendments on each side of the perimeter of the tract to be rezoned, even along the heavily wooded rear portion of the property.

[5] Previously, the MPC only authorized land surveyors or professional engineers to prepare plats.

1999 Methadone Treatment Facilities

Act 10 of 1999 amended the MPC to prohibit the location of defined methadone treatment facilities within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse, or other actual place of regularly stated religious worship. Exceptions to the prohibitions are also noted.

2000 General Consistency
Comprehensive Plans
Multimunicipal Planning
Substantive Challenges
Intergovernmental Cooperation
State Grants and Agency Decisions
Infrastructure Planning
Agriculture, Forestry, Mining
Municipal Sharing of Tax Revenue
Transfer of Development Rights
Traditional Neighborhood Development
Center for Local Government Services

Act 67 of 2000 and Act 68 of 2000 were the most extensive amendments to the MPC since the Act 170 of 1988 recodification and amendments. Because of alternative and innovative provisions in the acts, they were termed by some as the "growing smarter" legislation.

Act 67 retitled Article XI (formerly "Joint Municipal Planning Commissions") as "Intergovernmental Cooperative Planning and Implementation Agreements." It eliminated all earlier provisions of the article, substituting, among other things, an authorization for municipalities in a county or counties to enter into intergovernmental cooperative agreements for the purpose of developing, adopting, and implementing a comprehensive plan. Where a multimunicipal comprehensive plan is adopted, Article XI authorizes intergovernmental cooperative agreements for the purpose of implementing the plan by establishing a process to achieve general consistency between the multimunicipal comprehensive plan, individual or joint zoning and subdivision/land development ordinances that comply with the comprehensive plan, and capital improvements plans. Municipalities that enter into implementation agreements would have

additional powers to provide for sharing of tax revenues and fees and to adopt a multimunicipal transfer of development rights program. They also would have the authority to adopt a specific plan for the systematic implementation of any nonresidential part of the area covered by the multimunicipal comprehensive plan.

Pursuant to Act 67, State agencies must consider and may rely upon these generally consistent plans and ordinances when reviewing applications for funding or permitting infrastructure or facilities. State agencies must also consider and may give priority consideration to applications for financial or technical assistance for projects consistent with the plan.

An important element of the act is that it provides another exception to the general rule requiring "all uses in every municipality."[6] Article XI, Section 1103(a)(4), enables municipalities participating in a multimunicipal comprehensive plan to "plan for the accommodation of all categories of uses . . . , provided, however, that all uses need not be provided in every municipality, but shall be planned and provided for within a reasonable geographic area of the plan."[7] Furthermore, in the case of a substantive validity challenge to a zoning ordinance of a municipality which participates in a multimunicipal comprehensive plan and which has a zoning ordinance generally consistent with that plan, the act provides that a governing body, zoning hearing board, or court on appeal is to consider the availability of a use within a reasonable geographic area under all zoning ordinances of the municipalities participating in the multimunicipal comprehensive plan.

Act 67 included definitions for a number of new terms as part of the aforementioned amendments. These were for: "designated growth area," "development of regional significance and impact," "future growth area," "multimunicipal plan," "public infrastructure area," "public infrastructure services," "rural resource area," "specific plan," and "village."

Act 68 of 2000 is a broader amendment than Act 67, impacting a number of articles in the MPC. The genesis of Act 68 occurred during the 1993-1994 Legislative Session, and the legislation evolved to finally become law in 2000. The first bill, House Bill 2662, was introduced on April 6, 1994, and was referred to the House Local Government Committee on the same date, where it remained until the end of the 1993-1994 Legislative Session. During the 1995-1996 Legislative Session, the language from House Bill 2662, generally, was reintroduced as Senate Bill 1076 and Senate Bill 1157, with the primary exception being that Senate Bill 1157 did not contain a proposed new article pertaining to projects of regional impact. Neither bill was given consideration on the Senate floor through the end of the session. Again, in the 1997-1998 Legislative Session, amended language based on the earlier iterations, was introduced as House Bill 1613 and Senate Bill 270. Neither bill contained an article pertaining to projects of regional impact, but Senate Bill 270 did include, for the first time, an article pertaining to traditional neighborhood development (TND). Although Senate Bill 270 was revised through the course of four printer's numbers, neither bill was given full consideration by its respective chamber. Finally, during the 1999-2000 Legislative Session, several legislators introduced a number of "growing smarter"-related MPC bills and, after receiving much input, undergoing extensive negotiations, and making many revisions, the General Assembly passed and the Governor signed Senate Bill 300 to become Act 68 on June 22, 2000. The background of the other piece of "growing smarter" legislation, Act 67 of 2000, is provided in the introduction to Article XI in Chapter 3.

[6] *See infra* note 6, p. 8.

[7] *See also* MPC Sections 810-A and 811-A.

(See note 6 reference on previous page.)

[6] This "rule" is essentially a restatement of the prohibition on exclusionary zoning in Pennsylvania. This prohibition is more commonly recognized in the context of the "fair share" doctrine as set forth by the Pennsylvania Supreme Court in *Surrick v. Zoning Hearing Board of Upper Providence Township,* 476 Pa. 182, 382 A.2d 105 (1977). The Pennsylvania Supreme Court discussed the genesis of the doctrine and its application in *BAC, Inc. v. Board of Supervisors of Millcreek Township,* 534 Pa. 381, 633 A.2d 144 (1993):

> In *[Surrick]*, we formulated an analytical method for assessing whether a zoning ordinance is unconstitutionally exclusionary. The procedure we devised grew out of a series of decisions relating back to two constitutional principles. The first is that individuals have the right to enjoy private property. Pa. Const. Art. I, § 1. The second is that any governmental exercise of police power to interfere with this right must be reasonable to comply with federal due process requirements. U.S. Const. amends. V and XIV; *Girsh Appeal,* 437 Pa. 237, 241 n. 3, 263 A.2d 395, 397 n. 3 (1970). The latter principle demands that a zoning ordinance be substantially related to the protection of the public welfare. *National Land and Investment Company v. Easttown Township Board of Adjustment,* 419 Pa. 504, 522, 215 A.2d 597, 607 (1965).
>
> These core principles inspired our decisions in a line of cases collectively embracing the following view: Where a municipal subdivision is a logical place for development to occur, it must assume its rightful part of the burdens associated with development, neither isolating itself nor ignoring the housing needs of the larger region . . . This philosophy finds concrete expression in the "fair share" principle, which this Court has adopted. It requires local political units to "plan for and provide land use regulations which meet the legitimate needs of all categories of people who may desire to live within its boundaries." *Surrick,* 476 Pa. at 189, 382 A.2d at 108.
>
> A municipality violates this principle if it practices exclusionary zoning, which could exist in one of two forms. A particular use could be totally excluded. Such was the case in *Girsh Appeal,* where the ordinance made no provision for multiunit apartment buildings. Alternatively, a zoning ordinance could partially exclude a use to such an extent that it engages in "tokenism" or "selective admission." That was the objection we had in *Willistown,* where 80 of the township's 11,589 acres were set aside for apartments.

633 A.2d at 146-47 (citations omitted).

The prohibition on exclusionary zoning is not limited to residential uses. While a municipality need not zone for every conceivable use, the doctrine has been applied successfully to a variety of potential uses. *See, e.g., Baker v. Upper Southampton Township Zoning Hearing Board,* 830 A.2d 600 (Pa. Cmwlth. 2003) (off-premises signs); *County of Beaver v. Borough of Beaver Zoning Hearing Board,* 656 A.2d 157 (Pa. Cmwlth. 1995) (jails).

The ascendance of multimunicipal zoning and planning in Pennsylvania required the General Assembly's acknowledgement of exclusionary principles. The addition of Article VIII-A (Joint Municipal Zoning) to the MPC by Act 170 of 1988 included Section 811-A, which provided that "[i]n any challenge to the validity of the joint municipal zoning ordinance, the court shall consider the validity of the ordinance as it applies to the entire area of its jurisdiction as enacted and shall not limit consideration to any single constituent municipality." 53 P.S. § 10811-A. Thus, Pennsylvania courts were instructed to broaden an exclusionary analysis beyond individual municipal boundaries for municipalities party to a joint zoning ordinance.

The Act 67 amendments codified a similar mechanism at Section 916.1(h) and Section 1006-A(b.1) for a single municipal zoning ordinance that was enacted in harmony with a multimunicipal comprehensive plan. The Pennsylvania Supreme Court has suggested that this section was intended to alter the rule exemplified in prior case law that required municipalities to provide for every lawful use in their individual zoning ordinances, even if they were party to multimunicipal planning. *See In re Petition of Dolinger Land Group,* 839 A.2d 1021 (Pa. 2003), *citing Nicholas, Heim and Kissinger v. Harris Township,* 31 Pa. Cmwlth. 357, 375 A.2d 1383 (1977) (Holding that a joint comprehensive plan may not be used to justify exclusion of a legitimate use because comprehensive plans are "recommendatory" rather than regulatory). While the aforementioned sections may have broadened the geographic area considered in an exclusionary analysis, there is nothing to suggest that the underlying constitutional principles applied by the courts have been altered by amendments to the MPC.

Act 68 affected the MPC as follows:

- Article I (General Provisions) was amended through the addition of new purposes and definitions.
- Article II (Planning Agencies) was amended by adding a new Section 212, entitled "Intergovernmental Cooperation."
- Article III (Comprehensive Plan) was amended by, among other things:
  - addressing the compatibility of development in a municipality with development in contiguous municipalities and its general consistency with the county comprehensive plan;
  - requiring a plan for natural and historic resource protection to the extent it is not preempted by Federal and State laws;
  - requiring identification of a plan for preservation and enhancement of prime agricultural land;
  - requiring that compatibility of land use regulation with existing agricultural operations be encouraged;
  - requiring a review of a municipal or multimunicipal comprehensive plan at least every 10 years;
  - permitting identification of growth areas to allow adequate planning for relevant infrastructure services;
  - permitting review and comment by municipalities and school districts in county planning;
  - providing up to 25 percent of state grants for developing/revising comprehensive plans, on a priority basis, to municipalities that agree to make their comprehensive plans generally consistent with the county comprehensive plan;
  - requiring that a county update its comprehensive plan at least every 10 years, and that it consider amendments to its comprehensive plan when proposed by municipalities considering adoption or revision of their comprehensive plans so as to achieve general consistency;
  - requiring municipal ordinances and programs to generally implement the municipal/multimunicipal comprehensive plan; and
  - providing an expanded role for the Governor's Center for Local Government Services.
- Article V (Subdivision and Land Development) was amended by, among other things:
  - authorizing the county planning commission to offer voluntary mediation to contiguous municipalities with regard to a proposed subdivision or land development;
  - permitting a municipality to appear and comment in the land use proceedings of a contiguous municipality; and
  - eliminating the need to give financial security to a municipality for the costs of any improvements for which the Pennsylvania Department of Transportation (PennDOT) requires and receives financial security in connection with a highway occupancy permit.

- Article V-A (Municipal Capital Improvement) was amended by, among other things:
  - allowing two or more municipalities to impose impact fees if they have adopted a joint municipal comprehensive plan;[8]
  - clarifying the requirement that "peak-hour" trips be used to calculate impact fees;
  - setting criteria under which fees paid by an applicant, with the applicant's approval, may be used for projects other than those in the capital improvements plan, including multimodal projects; and
  - authorizing an additional impact fee on certain new developments that will generate a stated high level of peak hour trips.
- Article VI (Zoning) was amended by, among other things:
  - directing the county planning commission to offer voluntary mediation to contiguous municipalities with regard to zoning disputes;
  - providing for limitations in local regulation of, and protections for, agricultural, forestry, and mining practices, including ensuring forestry as a permitted use by right in all zoning districts, prohibiting ordinances that are preempted by Federal and State laws, and prohibiting ordinances that restrict existing agricultural operations from expanding or changing their operations unless the agricultural operation will have a direct adverse effect on public health and safety;
  - requiring general consistency of zoning ordinances with the comprehensive plan;
  - establishing criteria under which a municipal authority, water company, or any other municipality that plans to expand water, sanitary sewer, or storm sewer service must give notice to the potentially affected municipality;
  - permitting, by agreement, the transfer of development rights among municipalities; and
  - requiring Commonwealth agencies to consider, and permitting them to rely on, a joint municipal zoning ordinance for the funding or permitting of infrastructure or facilities and allowing jointly zoned municipalities to share tax revenues.
- Article VII (Planned Residential Development) was amended by adding additional provisions regarding the time when municipal action is to be taken on a planned residential development (PRD) application for final approval.
- Article VII-A (Traditional Neighborhood Development) was added, providing, among other things, for standards and conditions for the development of mixed-use traditional neighborhoods.
- Article IX (Zoning Hearing Board and other Administrative Proceedings) was amended by moving what was Section 603(c)(2.1) into a new Section 917 entitled "Applicability of Ordinance Amendments."
- Article X-A (Appeals to Court) was amended by requiring that each municipal zoning ordinance provide for reasonable coal mining activities.

[8] Section 508-A(a) permits municipalities that have adopted a joint municipal comprehensive plan to adopt a joint municipal impact fee ordinance; moreover, Section 508-A(a) makes no reference to municipalities acting through a joint municipal authority. However, in Sections 503-A(h) and 505-A(h), reference is made to a "joint municipal authority" in connection with two or more municipalities acting jointly to impose impact fees. It may, then, be reasonable to assume that municipalities may utilize the law governing intergovernmental cooperation or the mechanism of a joint municipal authority to jointly impose impact fees.

2000

Recording of Plats
Infrastructure or Facilities Funding or Permitting
Substantive Challenges
Applicability of Ordinance Amendments
Special Applicability Provisions

Act 127 of 2000 amends the MPC by: (1) redefining the developer's time requirement for recording a plat; (2) placing a correct reference to the requirement of general consistency between the zoning ordinance and the comprehensive plan as a factor to be considered by Commonwealth agencies in the review of infrastructure or facilities funding or permitting applications; (3) preventing a landowner who has challenged the validity of a zoning ordinance or map from filing any additional challenges involving the same land until the original challenge is decided or withdrawn, unless the municipality adopts a substantially new or different zoning ordinance or map; (4) providing that if an application for a special exception or a conditional use which would constitute a land development or subdivision is approved, the applicant is entitled, for a period of at least six months, or longer, following the date of such approval to proceed with the submission of plans in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was filed; and (5) further providing that a municipal zoning ordinance enacted on or before August 21, 2000, shall not be invalidated, superseded, or affected by the prior amendatory provisions to the MPC made by Acts 67 and 68 of 2000 until on or after February 22, 2001.

2002 Compensation for Planning Commission Members; Notice of Zoning Ordinance Amendments; Procedures for Certain Governing Body, Zoning Hearing Board, and Planning Agency Hearings and Decisions or Findings; Definition and Provision for No-Impact Home-Based Business

Act 2 of 2002 amends the MPC by: (1) authorizing the compensation for planning commission members, except for those who are elected or appointed officers or employees of the municipality; (2) requiring, in the event of a proposed zoning ordinance amendment involving a zoning map change, that notice of the public hearing be given by first class mail to affected property owners, in addition to existing posting requirements; and (3) further providing for the procedures, including time periods, to conduct hearings and render decisions or issue findings on landowner curative amendments, PRDs, zoning hearing board proceedings, and conditional uses.

Act 43 of 2002 defines "no-impact home-based business" and requires that zoning ordinances permit no-impact home-based businesses in all residential zones as a use permitted by right. In addition, Act 43 addresses provisions in the MPC that were imposed by Act 2 of 2002. In sum, Act 43:

- Amends Sections 609.1(b) and 908(9) by clarifying and making certain that the new time requirements and deemed approval provisions of Act 2 do not apply to substantive challenges to the validity of a zoning ordinance, whether brought as an appeal to the zoning hearing board or pursued through a curative amendment presented to the municipal governing body. These matters remain governed by Section 916.1.
- Makes some technical changes to Act 2's amendments to Section 908(1.2) and modifies Sections 908(1.2) and 913.2(b)(2) to provide new equitable provisions concerning the period for completion of the applicant's case-in-chief and the time frame provided to opposing parties.
- Specifies in Sections 908(9) and 913.2(b)(2) that failure to conduct or complete, as well as commence, a hearing in a proceeding before the zoning hearing board or a conditional use request before the governing body, in compliance with specified hearing procedures, results in a deemed approval.

2004

Definition of Multimunicipal Plan
Criteria for Zoning Hearing Board Membership
Designation of Zoning Hearing Board Alternate Members
Billing of Professional Consultant Review Fees
Applicant Safeguards for Review and Inspection Fee Charges and Dispute Notification and Arbitration

Act 99 of 2004 amends the MPC by: (1) providing that all municipalities participating in a multimunicipal plan need not be contiguous if all of them are within the same school district; (2) stipulating that members and alternate members of the zoning hearing board neither shall hold any other elected or appointed office in the municipality nor shall be an employee of the municipality; and (3) further authorizing the chairman of the zoning hearing board to appoint alternate members to replace any absent or disqualified members. The effective date of this act is December 20, 2004.

Act 206 of 2004 further amends the MPC by: (1) adding the definition of "professional consultants," which includes attorneys, among others; (2) clarifying that review fees for subdivision or land development applications which are charged by the municipality's professional consultants, as defined, may be billed by the governing body to the applicant; and (3) adding provisions to better safeguard applicants with respect to: (a) subdivision or land development application review fee charges and dispute notification, (b) improvement inspection fee charges and dispute notification, and (c) the fee dispute arbitration process. The effective date of this act is January 31, 2005.

Chapter 3

Amendments by Article and Section

(Act 170 of 1988 through Act 206 of 2004)

The amendments made to the MPC from and including Act 170 of 1988 through Act 206 of 2004 have impacted particular articles and sections of the MPC as follows. Please note that no attempt is made to summarize the entire content of any of the amended sections. Only the most significant aspects of how these sections were modified by the amendatory acts are discussed.

Article I – General Provisions

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 101. Short Title.	
This section was not amended.	
Section 102. Effective Date.	
This section reaffirms January 1, 1969, as the original effective date of the act.	
Section 103. Construction of Act.	
The Act 170 amendment to this section was meant to clarify that the provisions of the MPC were not applicable to cities of the first class (Philadelphia), cities of the second class (Pittsburgh), and counties of the second class (Allegheny). This amendment was impacted by Act 131 of 1992. Although Act 131 did not specifically amend this section, it did add counties of the second class to the definitions of "county," "governing body," and "municipality" in Section 107(a), thereby extending to Allegheny County and its Board of Commissioners[1] the authority to exercise the	**1988-170**

[1] *Commentary:* The citizens of Allegheny County, on May 19, 1998, adopted a home rule charter, the effective date of which was January 1, 2000. The charter brought about an executive-council form of government, wherein the Board of Commissioners, in which the County's legislative and executive functions had been solely vested, was abolished. The Charter placed the County's legislative functions in an elected County Council, comprised of 15 council members. The executive authority for Allegheny County was vested in an elected Chief Executive.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
powers that the MPC had conferred on counties of the second class A through eighth class.[2] Therefore, the Act 170 amendments to this section must be read in light of Act 131 of 1992.	
Section 104. Constitutional Construction.	
This section was not amended.	
Section 105. Purpose of Act.	
This section was amended by Act 170 of 1988 to delete the general statement of intent that recommendations made by a planning agency to a governing body be advisory only. The deletion was made because the powers, duties, and responsibilities of planning agencies have been clearly defined in Articles II, III, and V. Since Act 170, Section 105 was only amended twice: (1) initially by Act 68 of 2000, which places additional emphasis on the fact that the MPC is intended to ensure general consistency between planning and zoning and to preserve natural and historic resources and prime agricultural land, while protecting forestry and agricultural operations, and (2) subsequently by Act 43 of 2002, which further provides that the intent, purpose, and scope of the MPC is to promote small business development and foster a business-friendly environment in the Commonwealth. The former amendment reflects, in part, the extensive "growing smarter" legislation of 2000. The latter reflects the provision for "no-impact home-based business" as a permitted use by right in all residential zoning districts.[3]	**1988-170** **2000-68** **2002-43**
Section 106. Appropriations, Grants and Gifts.	
This section was not amended.	
Section 107. Definitions.[4]	
Subsection (a). The following definitions were (1) added or amended to clarify provisions in the MPC existing prior to the enactment of Act 170 of 1988, (2) added to explain Act 170 amendments to this legislation, or (3) added or amended to effectuate Act 131 of 1992, Act 138 of 1994, Act 67 and Act 68 of 2000, Act 43 of 2002, and Act 99 and Act 206 of 2004 amendments to the MPC.	
"Agricultural operation." This broadly defined term was added to provide greater protections for agriculture-oriented uses particularly as specified in Sections 301(a)(7)(iii), 603(b), and 709-A.	**2000-68**

[2] *Commentary:* Although Allegheny County itself could not operate under the MPC until the enactment of Act 131 of 1992, it should be clearly understood that the provisions of the MPC have applied in, and remain applicable to, all municipalities situate within Allegheny County with the sole exception of the City of Pittsburgh.

[3] *See* Section 603(l).

[4] Definitions for "appointing authority," "common open space," "landowner," and "substantially completed" received minor amendments by Act 170 of 1988 and, therefore, have no commentary under this section.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
"Application for development." The word "tentative" was added to the definition since pre-final plans for a PRD are referred to as "tentative" rather than preliminary in Article VII, dealing with PRDs.	**1988-170**
"Authority." This definition was added by Act 170 of 1988 in order to address the Pennsylvania Public Utility Commission (PUC) amendments found in Sections 503.1 and 705(j), relating to assurance that adequate water supplies will be available for subdivisions or PRDs. The term subsequently was referenced by Act 68 of 2000 in Sections 503-A(h) and 505-A(h), pertaining to municipal capital improvement, and again by Act 68 in Section 608.1, pertaining to requirements of municipal authorities and water companies, and also by Act 67 of 2000 in Sections 1105(c) and 1106(b)(2), pertaining to implementation of a county or multimunicipal comprehensive plan. An Authority is defined as a body politic and corporate created pursuant to the Municipality Authorities Act of 1945.[5]	**1988-170**
"Center for Local Government Services." This definition was added because of the Center's delineated responsibilities in being sent updated municipal or multimunicipal comprehensive plans (Section 301(c)), issuing a Land Use and Growth Management Report every five years (Section 307), and working with municipalities to coordinate state agency program resources with planning and zoning activities and to identify and assess the effect of state agency decisions on planning and zoning (Section 619.2(b)).	**2000-68**
"Conditional use." This term encompasses a land use which is not permitted by right 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(c)(2) authorizes the enactment of conditional use provisions in the zoning ordinance, and Section 913.2 prescribes the procedure for granting such uses.	**1988-170**
"Consistency." This definition was added, in part, to define the term "general consistency" in this subsection and hence, for the purposes of promoting conformity between a municipal comprehensive plan and the county comprehensive plan and between a comprehensive plan and implementing ordinances, pursuant to amendments to Articles III, VI, and XI.	**2000-68**
"County." This definition was amended to include counties of the second class.	**1992-131**
"County comprehensive plan." This definition was added because of its use in provisions for the contents, preparation, adoption and amendment, and legal status of a county comprehensive plan (Article III), as well as the general consistency between a municipal comprehensive plan and the county comprehensive plan (Articles I, III, and VI).	**2000-68**

[5] The provisions of this act are now contained at Title 53 of Pa.C.S., Section 5601 et seq.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
"Designated growth area." This definition was added, in part, to define "future growth area" and "public infrastructure area" in this subsection, and because of its use in the context of a county or multimunicipal comprehensive plan (Section 1103(a)(1)), a multimunicipal plan implementation agreement (Section 1104(c)), and a county or multimunicipal transfer of development rights program (Section 1105(b)(2)).	**2000-67**
"Development of regional significance and impact." This definition was added for the purposes of stipulating the content of a county comprehensive plan (Section 301(a)(7)(ii)) and establishing a process for review and approval of such development under a multimunicipal comprehensive plan cooperative implementation agreement (Section 1104(b)(2)).	**2000-67**
"Development plan." This definition was clarified by providing that a "development plan" consists of "the provisions for development, *including* a planned residential development . . . " among other types and elements of development, as opposed to solely "the provisions for development of a planned residential development . . . ." (Emphasis added.)	**1988-170**
"Forestry." Act 131 of 1992 added Section 603(f) providing that "[z]oning ordinances may not unreasonably restrict forestry activities." However, Act 38 of 1994 subsequently first added the definition for "forestry." Act 68 of 2000 provided additional protections for forestry in the definition for "preservation and protection" in this subsection and in an amendment to Section 603(f), which ensures that forestry activities are a permitted use by right in all zoning districts.	**1994-38**
"Future growth area." This definition was added, in part, to define "public infrastructure area" in this subsection, and because of authorization for its designation in a county or multimunicipal comprehensive plan and a cooperative implementation agreement (Sections 1103(a)(2) and 1104(c), respectively).	**2000-67**
"General consistency, generally consistent." This definition was added for the purposes of promoting conformity between a municipal comprehensive plan and the county comprehensive plan and between a comprehensive plan and implementing ordinances pursuant to amendments to Articles III, VI, and XI.	**2000-68**
"Governing body." This definition was amended to include the board of commissioners in counties of the second class.[6]	**1992-131**
"Land development." This definition was amended to clarify the nature, scope, and extent of this term, including its application to nonresidential developments that occur on a single lot, but which otherwise may have a broad influence upon the community. Examples of these influential nonresidential developments would include	**1988-170**

[6] *See supra* note 2, p. 16.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
office buildings, shopping malls, and fast food restaurants, along with the exemption of various principal and accessory uses in accordance with Section 503(1.1).	
"Lot." This definition was 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.	**1988-170**
"Mediation." This term was added by Act 170 of 1988 to explain the provisions that permit settlement of disputes between or among interested parties in land use matters through the use of a mutually acceptable independent third party (Sections 508(7), 609(f), 708(c), and 908.1). County planning commission mediation provisions subsequently were added by Act 68 of 2000 as they pertain to possible subdivision and land development and zoning ordinance conflicts between contiguous municipalities (Sections 502.1 and 602.1), and to public infrastructure service agreement negotiations (Section 1104(d)).	**1988-170**
"Minerals." This definition was added for the county comprehensive plan requirement to identify the appropriate utilization of this resource (Section 301(a)(7)(i)), the municipal comprehensive plan requirement to recognize that statutes regulating mineral extraction address possible impacts from this activity on water supply (Section 301(b)(1)), the acknowledgement that various state laws regulating mineral extraction preempt possible comprehensive plan and zoning ordinance provisions (Sections 301(a)(6) and 603(b)), and the requirement that zoning ordinances provide for reasonable development of minerals in each municipality (Section 603(i)).	**2000-68**
"Mobilehome." This term was amended to clarify that it refers to a dwelling type that may be a single mobilehome, a doublewide, or attached modular units.	**1988-170**
"Mobilehome lot." This term was 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.	**1988-170**
"Mobilehome park." This definition was amended to clarify that a mobilehome park may be either a single parcel of land or contiguous parcels that have been designated as a mobilehome park, and is, by improvement, intended for use as two or more mobilehome lots.	**1988-170**
"Multimunicipal plan." This definition was added by Act 67 of 2000, primarily for the purposes of Article XI, which pertains to the development, adoption, and implementation of a comprehensive plan by more than one contiguous municipality. The term subsequently was amended by Act 99 of 2004 to provide that all municipalities participating in the plan need not be contiguous, if all of them are within the same school district. Amendments also were made primarily to Articles III and VI, as well as to Articles IX and X-A, to incorporate the term, where appropriate, to facilitate implementation of, and consistency with, Article XI.	**2000-67** **2004-99**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
"Multimunicipal planning agency." This definition most likely was added to tie into references to a joint planning commission in Articles VIII-A and XI.	**2000-68**
"Municipal authority." See the definition of "authority."	**1988-170**
"Municipal engineer." This term is identical to the definition of "engineer." The purpose of this addition was to insure that it has the same meaning as engineer whenever such terms are used interchangeably in the MPC.	**1988-170**
"Municipality." This definition was amended by Act 170 to add home rule municipalities to the existing enumeration, thereby bringing it in conformity with a provision of the Home Rule Charter and Optional Plans Law,[7] which requires a home rule municipality to comply with the Municipalities Planning Code.[8] Act 131 of 1992 also amended this definition to include counties of the second class.	**1988-170** **1992-131**
"Nonconforming lot." This term was 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." Its addition was necessary because definitions of "nonconforming use" and "nonconforming structure" did not necessarily include the measurement or area of a parcel of land.	**1988-170**
"Nonconforming structure." This definition was amended to clarify that the term applies to the dimensions of the nonconforming structure, as well as the use of the structure.	**1988-170**
"No-impact home-based business." This definition was added with respect to an amendment to Section 603 (Ordinance Provisions), which requires zoning ordinances to "permit no-impact home-based businesses in all residential zones of the municipality as a use permitted by right . . . ." To qualify, a business or commercial activity must satisfy criteria and enumerated requirements specified in the definition.	**2002-43**
"Official map." This term was added to clarify that whenever it is used throughout the Code, it refers only to the map adopted by ordinance pursuant to Article IV (Official Map).	**1988-170**
"Planned residential development." This definition for PRD was amended to permit a developer to combine residential and nonresidential uses in a PRD. This is necessary because certain nonresidential uses are often integral to the comprehensive development of a neighborhood and to the community needs which the development will generate.	**1988-170**
"Preservation or protection." This definition was added, primarily for references in Articles III, VI, and XI, to clarify the meanings of these words so not "to authorize the unreasonable restriction of forestry, mining or other lawful uses of natural resources."	**2000-68**

[7] 53 Pa.C.S. § 2901 et seq.

[8] *See* 53 Pa.C.S. § 2962(a)(10).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
"Prime agricultural land." This definition was added to clarify the meaning of this term in the context of provisions for the preservation, protection, and enhancement of "prime agricultural land" in municipal comprehensive plans (Section 301(a)(2)), county comprehensive plans (Section 301(a)(7)(iii)), and zoning ordinances (Section 603(b)(5)).	**2000-68**
"Professional consultants." This term was added in conjunction with amendments to Sections 503(1) and 510(g) to explicitly authorize subdivision and land development application review fees and improvement inspection fees that are billed by a municipal solicitor, as well as other defined "professional consultants," to be charged to the applicant. Sections 503(1) and 510(g) were also amended to consistently apply the term, "professional consultants," as it pertains to the review fee and inspection fee dispute notification and arbitration process.[9]	**2004-206**
"Public grounds." This terminology was amended to expand the enumerated recreational uses set forth in the definition.	**1988-170**
"Public hearing." This definition was amended to clarify the applicability of the term as used throughout the MPC. Generally, it is conducted to obtain, add, and provide information. A public hearing is *required* prior to: adoption of a comprehensive plan (Section 302(b)); enactment of an official map and ordinance, or part thereof or amendment thereto (Section 402(b)); enactment or amendment of a subdivision and land development ordinance (Sections 504 and 505); issuance and presentation of land use assumptions for a transportation capital improvements plan (Section 504-A(c)(1)); adoption of a transportation capital improvements plan (Section 504-A(e)(3)); enactment or amendment of a zoning ordinance (Sections 608 and 609); location of a methadone treatment facility within 500 feet of specified uses (Section 621(b)); a determination on common open space maintenance in a PRD (Section 705(f)(4)); modification, removal, or release of provisions of a PRD plan (Section 706(3)(ii)); and approval of a PRD (Sections 708 and 711). A "public hearing" should be distinguished from a "public meeting" as defined in this section and "hearing" as defined in Section 107(b), relating to administrative proceedings under Article IX (Zoning Hearing Board and Other Administrative Proceedings).	**1988-170**
"Public infrastructure area." This term was added to denote a designated growth area and all or any portion of a future growth area, as described in a county or multimunicipal	**2000-67**

[9] *Commentary:* Addition of this definition and corresponding amendments to Sections 503(1) and 510(g) were in reaction to the Commonwealth Court's decision in *Mountain Village v. Board of Supervisors of Longswamp Township,* 828 A.2d 411 (Pa. Cmwlth. 2003), *affirmed,* 874 A.2d 1 (Pa. 2005), wherein Mountain Village sought declaratory judgment that, under the MPC, the township could not charge review fees billed by the township solicitor for legal services relating to township's review of Mountain Village's application for expansion of a mobile home park. The Berks County Court of Common Pleas granted summary judgment in favor of the township. Mountain Village appealed. The Commonwealth Court reversed the court of common pleas decision by holding that the MPC did not allow the township to charge review fees for services of the township solicitor, since Sections 503(1) and 510(g) of the MPC did not contain any specific language pertaining to the legal review of subdivision and land development plans or the charging of attorney's fees.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
comprehensive plan, in which the county may facilitate the convening of various public and private infrastructure service agencies for the purpose of negotiating agreements for the provision of infrastructure services (Section 1104(d)).	
"Public infrastructure services." This term was added because of its use in the context of: defining "designated growth area," "future growth area," "public infrastructure area," and "rural resource area" in this subsection; identifying areas where growth and development are planned to occur in a comprehensive plan (Section 301(d)); and facilitating a public infrastructure area agreement (Section 1104(d)).	**2000-67**
"Public meeting." This definition was added for the same rationale stated for the term "public hearing." It should be differentiated from "public hearing" and "hearing." Public meetings are specifically required prior to adoption of a comprehensive plan (Sections 302(a) and 1103(c) by reference); for presentation of the transportation capital improvements plan to the governing body (Section 504-A(e)(3)); prior to enactment of an transportation impact fee ordinance (Section 505-A(b)); and during the preparation of a zoning ordinance (Sections 607(b) and 807-A(2)). The Sunshine Act reference, which was amended to reflect the act's codification in the Pennsylvania Consolidated Statutes,[10] is made to indicate the proper notice and advertising as well as public participation and minute-keeping requirements for public meetings. No stenographic records are required of these sessions.	**1988-170** **2000-68**
"Public notice." This definition was amended to clarify the time parameters for publication of the second notice, as well as the first notice, in a newspaper of general circulation. Pubic notice is a requisite for hearings, public hearings, and certain decisions.	**1988-170**
"Regional planning agency." This definition was added to clarify that a regional planning agency is comprised of representatives of more than one county, and to enumerate the responsibilities of a regional planning agency. The definition incorporates the term "regional planning commission," which is not specifically defined and is not found anywhere else in the MPC except in Section 1107 (Savings), and is used in the context of possibly reviewing a municipal or multimunicipal comprehensive plan (Section 301(c)). Initially, "regional planning commission" was incorporated in Section 1106 (Established Regional Planning Commission) and 1107 (Savings) by Act 247 so as to address the role and existence of a regional planning commission in light of the MPC. Section 1106 has since been deleted and replaced by the Act 67 of 2000 amendments to the MPC, but Section 1107 still remains.	**2000-68**
"Rural resource area." This definition was added because of its use in the context of a county or multimunicipal comprehensive plan (Section 1103(a)(3)), a multimunicipal plan implementation agreement (Section 1104(c)), and a county or multimunicipal transfer of development rights program (Section 1105(b)(2)).	**2000-67**

[10] 65 Pa.C.S. Chapter 7.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
"Special exception." This added definition 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 (Zoning). Section 603(c)(1) authorizes the enactment of provisions for special exceptions in the zoning ordinance and Section 912.1 prescribes the procedures for granting such uses.	**1988-170**
"Specific plan." This definition was added for the purpose of Section 1106 provisions, which, to expedite development approval, gives municipalities, participating in a multimunicipal or county comprehensive plan, authority to adopt a "specific plan" for the systematic implementation of the comprehensive plan for any nonresidential area.	**2000-67**
"State Land Use and Growth Management Report." This definition of the report's general content was added in conjunction with Section 307, which requires the Governor's Center for Local Government Services to issue the subject report by the year 2005 and review and update the report at five-year intervals thereafter.	**2000-68**
"Subdivision." This term was amended to clarify that land partitioned by the court for distribution to heirs or devisees constitutes a subdivision.[11]	**1988-170**
"Traditional neighborhood development." This term was added for the purposes of Article VII-A, which provides that "[t]he governing body of each municipality may enact, amend, and repeal provisions of a zoning ordinance in order to fix defined standards and conditions for a traditional neighborhood development . . . ."	**2000-68**
"Transferable development rights." This term (TDRs) was added by Act 170 of 1988 to describe a unique planning concept whereby a municipality, in its zoning ordinance, may permit development rights which are severable and separately conveyable as another estate in land. The specific authority and procedure is provided in Section 619.1, with additional authorizations provided in Sections 605(4) (relating to zoning classifications), 702.1 (relating to planned residential development), 703-A (relating to traditional neighborhood development), and 1105(b)(2) (relating to a county or multimunicipal comprehensive plan and implementation agreement). This provision encourages plan implementation and local development 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 by enabling them to sell their development rights to landowners in areas designated for growth. Act 131 of 1992 made technical amendments to this definition so that it would harmonize with amendments to Section 619.1, relating to intermunicipal TDRs in the context of a joint municipal zoning ordinance.[12]	**1988-170** **1992-131**

[11] *Commentary:* This amendment arose as a result of the decision, *In re Estate of Tettemer,* 26 Pa. D. & C.3d 745 (1981), *affirmed,* 311 Pa. Super. 635, 458 A.2d 287 (1983). That case held that lands thus partitioned by the court are not subdivisions and, thus, are exempt from land use regulation. This amendment, therefore, statutorily overrules the *Tettemer* decision.

[12] *Commentary: In Appeal of Buckingham Developers, Inc.,* 61 Pa. Cmwlth. 408, 433 A.2d 931 (1981), Commonwealth Court noted use of TDRs but did not reach the merits of the issue in its final adjudication.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
"Variance." This definition refers to relief from technical requirements in the zoning ordinance which would prevent or restrict a use that is an otherwise legitimate use within a zoning district due to a hardship related to the property in question. Procedures and criteria for granting such relief are provided generally in Article VI and specifically in Article IX.	**1988-170**
"Village." This term was added to characterize, in part, what constitutes a "designated growth area" and to delimit the only exception to where infrastructure services are not provided in the definition of a "rural resource area." Villages, again, in Section 1103(a)(3)(iii), are singled out as the exception to where "[i]nfrastructure extensions or improvements are not intended to be publicly financed by municipalities" in a rural resource area.	**2000-67**
"Water survey." This term defines the origin and extent of water resources within a municipality.	**1988-170**
Subsection (b). This subsection was added to define words and phrases used only in Article IX (Zoning Hearing Board and Other Administrative Proceedings) and Article X-A (Appeals to Court). Reference should be made to the commentary under Section 914.1 (Time Limitations) for a brief discussion of the distinctions between the terms "decision" and "determination."	**1988-170**
"Board." This term may refer to the governing body board or zoning hearing board, or, if designated, to the planning agency, as delineated in the MPC.	**1988-170**
"Decision." Although this term is used occasionally in other contexts elsewhere in the MPC, this added definition only pertains to its use in reference to zoning hearing board adjudications pursuant to Section 908 (Hearings) and Section 909.1(a) (pertaining to zoning hearing board jurisdiction); governing body or, if designated, planning agency actions pursuant to Section 908 (as applicable), Section 909.1(b) (pertaining to governing body and planning agency jurisdiction), and Section 913.2 (Governing Body's Functions; Conditional Uses); and appeals to court in Article XI.	**1988-170**
"Determination." This term also is used in a number of contexts throughout the MPC, but this added definition only pertains to its use in reference to Section 903 (Membership of [Zoning Hearing] Board), Section 909.1(a), and Section 909.1(b).	**1988-170**
"Hearing." By definition, this added term exclusively applies to matters before the zoning hearing board as enumerated under Section 909.1(a), and the governing body or, if designated, the planning agency under Section 909.1(b). Only in a hearing pursuant to Article IX must there be a stenographic record of the proceedings. A "hearing" has a different meaning and applications than a "public hearing."[13]	**1988-170**

[13] *See supra* discussion of the definition for "public hearing" in Section 107(a), p. 21.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
"Land use ordinance." This added, broad-meaning term is used in Section 909.1(a)(1), (4), (5), and (6) and Section 909.1(b)(5) and (6), even though, by definition, it applies to Article IV (Official Map), Article V (Subdivision and Land Development), Article VI (Zoning), and Article VII (Planned Residential Development).	**1988-170**
"Report." In Articles IX and X-A, this term is used as follows: Section 906 (Organization of [Zoning Hearing] Board), pertaining to report of zoning hearing board activities to the governing body; Section 908, pertaining to notice of report to the governing body or zoning hearing board (Section 908(8)) and report and recommendation of the hearing officer (Section 908(9)); and Section 1006-A (Judicial Relief), pertaining to the report or evidence of an expert employed by the court.	**1988-170**

Article II – Planning Agencies

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 201. Creation of Planning Agencies.	
This section was 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 serve as legal advisor.	**1988-170**
Section 202. Planning Commission.	
This section was amended by Act 170 of 1988 with merely editorial changes. However, it was amended substantively by Act 2 of 2002 to provide that members of the planning commission, except elected or appointed officers or employees of the municipality, may receive compensation in an amount fixed by the governing body which shall not exceed the rate of compensation authorized for members of the governing body.	**1988-170** **2002-2**
Section 203. Appointment, Term and Vacancy.	
This section was subdivided into subsections and was amended to add provisions, formerly found in Section 204, for filling vacancies or increasing or decreasing the number of members on the commission. The additions to this section did not change the law but, rather, constituted an editorial transfer from former Section 204.	**1988-170**
Section 204. Members of Existing Commissions.	
This section was repealed since it contained either transitional provisions, which have become obsolete, or provisions that have been transferred to Section 203.	**1988-170**
Section 205. Membership.	
Changes to this section were merely editorial.	**1988-170**
Section 206. Removal.	
This section was amended to delete the phrase "which appointed the member," conforming it to 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.	**1988-170**
Section 207. Conduct of Business.	
This section was not amended.	
Section 208. Planning Department Director.	
This section was not amended.	

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 209.1. Powers and Duties of Planning Agency.	
Subsection (a) sets forth the mandatory powers and duties of the planning agency. It was not amended.	
Subsection (b) sets forth additional powers and duties that the planning agency is empowered to exercise at the request of the governing body. The following clauses of this subsection were amended:	
Clauses (3) and (5) were amended editorially.	**1988-170**
Clause (7) was revised to clarify that a capital improvements program is to be submitted to the governing body for action.	**1988-170**
Clause (7.1) was 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 must be conducted in consultation with any public water supplier(s) in the area to be affected.	**1988-170**
Clause (10.1) was added to clarify that the planning agency may present testimony to any board. Since the MPC had been silent on this point, some planning agencies were deterred from performing this important function.	**1988-170**
Clause (14) was added to call for review of municipal development ordinances, at least as often as the review of the municipal comprehensive plan, with the intent 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.	**1988-170**
Subsection (c) was deleted since the municipal engineer would ultimately review and comment upon any recommendation of the planning agency that is submitted to the governing body.	**1988-170**
Section 210. Administrative and Technical Assistance.	
Amendments to this section were merely editorial.	**1988-170**
Section 211. Assistance.	
This section was not amended.	
Section 212. Intergovernmental Cooperation.	
This section was added, for the purposes of the MPC, to affirm authorization for municipal governing bodies to engage in intergovernmental cooperation and to enter into joint cooperation agreements in accordance with Title 53 of the Pennsylvania Consolidated Statutes (Pa.C.S.), Chapter 23, Subchapter A, relating to intergovernmental cooperation.	**2000-68**

Article III – Comprehensive Plan

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 301. Preparation of Comprehensive Plan.	
Subsection (a) was changed with the intention of strengthening the comprehensive plan as the overall policy guide for the physical development of a municipality. The required elements of the plan were substantially supplemented to give greater attention to housing, plan component interrelationships, and plan implementation. Most comprehensive plans already included these items.	**1988-170** **2000-68**
Clause (1) was amended to require that the statement of objectives in the comprehensive plan specifically include the consideration of location, character, and timing of future development. The amendment also was intended to encourage circumstances under which the statement of objectives in the comprehensive plan may serve as a basis for, or may be used as, the statement of community development objectives required to be enacted as part of a zoning ordinance pursuant to Section 606.	**1988-170**
Clause (2) was 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 uses to which such provisions may be applied. These changes emphasize that the timing of land use development is frequently as important as the amount, intensity, and character of the use; and that the added land uses, i.e., utilities, community facilities, parks and recreation, and agricultural preservation, are increasingly important considerations for effective land use planning.	**1988-170**
Clause (2.1) was added to require an element in the comprehensive plan to address present and future housing needs. The required 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 for households of all income levels. This provision was intended to encourage the consideration of a variety of housing needs for the community and its residents, including types and costs of housing.	**1988-170**
Clause (3) was amended to add pedestrian and bikeway systems to the items that may be considered in plans for the movement of people and goods. The amendment also replaced the term "mass transit routes" with "public transit routes."	**1988-170**
Clause (4) was amended to make editorial changes to clarify existing items which may be considered in plans for community facilities and utilities, and it added fire and police stations, flood plain management, and utility corridors and associated facilities to the list of items which may be considered.	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Clause (4.1) was added to require, as an element of the comprehensive plan, a statement of the interrelationships among the various plan components. It was intended to encourage integration of plan objectives and consideration of the impact which each component has upon the others, so that future land use decisions may be made with knowledge of the consequences for the community.	**1988-170**
Clause (4.2) was 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.	**1988-170**
Clause (5), which initially was amended by Act 170 of 1988, was modified substantially by Act 68 of 2000 to require that the comprehensive plan contain statements that: (1) development in a municipality is compatible with development and plans in contiguous portions of neighboring municipalities, or buffers or other transitional devices separate "disparate uses;" and (2) development is generally consistent with the county comprehensive plan.[1]	**1988-170** **2000-68**
Clause (6) was added to require that the comprehensive plan contain a plan for natural and historic resource protection, provided that the plan is consistent with and does not exceed the requirements of specifically identified laws regulating water, mining, and agriculture.	**2000-68**
Clause (7) was added to require that the county comprehensive plan identify various land uses (e.g., those relating to natural resources and mineral utilization or having regional significance); identify plans for prime agricultural land and historic preservation; and encourage compatibility of land use regulation with agricultural operations as defined in Section 107(a).	**2000-68**
Subsection (b) was added to initially authorize and ultimately require the comprehensive plan to include a plan which identifies reliable sources of water for both current and future needs. This plan must be consistent with the State Water Plan and any applicable water resource plan adopted by a river basin commission.	**1988-170** **2000-68**
Clause (1) was added to require that the comprehensive plan contain a statement recognizing that mineral extraction may impact water supply sources and that statutes governing mineral extraction activities specify replacement and restoration of water supplies affected by such activities.	**2000-68**

[1] *Commentary:* This provision reflects an area of concern to which reference can be found in several other articles of the MPC amendments; in particular, see Section 503(7). It relates to an objective of the Task Force to insure a coordination of the planning function between and among adjacent municipalities. These concerns were judicially recognized and confirmed by Commonwealth Court in its decision of *Miller v. Upper Allen Township Zoning Hearing Board,* 112 Pa. Cmwlth. 274, 535 A.2d 1195 (1987), in which the Court overruled previous opinions and held that aggrieved nonresidents of a municipality could appeal or intervene in zoning decisions made within the boundaries of an adjacent unit of local government.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Clause (2) was added to further require that the comprehensive plan contain a statement recognizing that commercial agricultural production may impact water supply sources.	**2000-68**
Subsection (c) was added to require review of the municipal or multimunicipal comprehensive plan every 10 years. When the municipal/multimunicipal plan is updated or reviewed, this subsection requires the municipality(ies) to solicit comments from: (1) governing bodies of contiguous municipalities; and (2) the county or, if requested by the county, the regional planning commission concerning the plan's general consistency with the county comprehensive plan. It also requires that the plan is sent to the Center for Local Government Services for informational purposes.	**2000-68**
Subsection (d) was added to allow the municipal/multimunicipal or county comprehensive plan to identify growth and development areas to allow adequate planning for and provision of public infrastructure services.	**2000-68**
Section 301.1. Energy Conservation Plan Element.	
This section was not amended.	
Section 301.2. Surveys by Planning Agency.	
This section embellishes the general provisions from Section 301(5) of the pre-Act 170 MPC, requiring the use of surveys and studies in the preparation of the comprehensive plan, by specifically enumerating the surveys and studies necessary to prepare the comprehensive plan.	**1988-170**
Section 301.3. Submission of Plan to County Planning Agency.	
This section 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 MPC; review by contiguous municipalities and the school district was added with the intent to provide the municipal planning agency and the governing body with the views of those agencies and government units that would be affected both directly and indirectly by the plan's policies. Identification and anticipated resolution of potential intergovernmental disputes are 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 ordinance has been standardized at 45 days. External review of subdivision plans, zoning ordinance amendments, and subdivision and land development ordinance amendments was standardized with a 30-day review period.	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 301.4. Compliance by Counties.	
Clause (a) was added as subsection 301.4 by Act 170 of 1988 to: (1) require that counties, which have not prepared and adopted a comprehensive plan, must do so within three years of the effective date of Act 170; and (2) provide that adopted municipal comprehensive plans shall be generally consistent with an adopted county comprehensive plan.[2] Subsequently, this language was designated as Clause (a) and amended by Act 68 of 2000 to provide municipalities and school districts with the opportunity for review, comment, and participation in county comprehensive planning.	**1988-170** **2000-68**
Clause (b) was added to require county planning commissions to provide advisory guidelines to municipalities that promote general consistency with the county comprehensive plan and uniformity in ordinance terminology.	**2000-68**
Section 301.5. Funding of Municipal Planning.	
This section was added to benefit municipalities that agree to make their comprehensive plans generally consistent with the county comprehensive plan by providing for up to 25 percent of state planning grants on a priority basis to such municipalities for developing/revising comprehensive plans.	**2000-68**
Section 302. Adoption of Municipal, Multimunicipal and County Comprehensive Plans and Plan Amendments.	
The title of this section was amended to reflect the section's scope as it pertains to plan amendments and to municipal, multimunicipal and county comprehensive plans.	**1988-170** **2000-68**
This section was substantially expanded to include a more detailed procedure for adopting the comprehensive plan and any plan amendments. It was 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, was intended to provide a less formal atmosphere.	
Subsection (a) language was amended considerably by Act 170 of 1988 by specifying the requirements for a public meeting and for 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 was intended to strengthen the external review process required in Section 301.3. Editorial amendments were made by Act 68 of 2000.	**1988-170** **2000-68**

[2] *Commentary:* In a previous printer's number of Senate Bill 535—a version which was not embodied in Act 170 of 1988—this section would have mandated comprehensive plans for all municipalities within the Commonwealth no later than five years after the effective date of this legislation. That earlier version also would have required updating all existing comprehensive plans in accordance with the amendments contained in this act. The House of Representatives removed these provisions and only mandated that counties prepare and adopt a comprehensive plan within three years of the effective date of this act.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Subsection (a.1) was added to provide additional requirements concerning the public meeting and comments in the adoption or amendment of a county comprehensive plan.	**2000-68**
Subsection (b) was added to require 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 the initial public hearing. These public hearings were meant to insure that the public has a full opportunity to react to the proposed plan or amendment prior to its adoption.	**1988-170**
Subsection (c), although numbered by Act 170 of 1988, was not amended.	
Subsection (d) was added to require that: (1) the county comprehensive plan be updated at least every 10 years; (2) a county consider proposed amendments to its comprehensive plan by municipalities that are considering adoption or revision of their municipal comprehensive plans in order to achieve general consistency between the respective plans; and (3) a county accept amendments to the county comprehensive plan proposed by two or more contiguous municipalities for the purpose of achieving general consistency between plans unless there is good cause for a refusal.	**2000-68**
Section 303. Legal Status of Comprehensive Plan within the Jurisdiction that Adopted the Plan.	
This section was divided into subsections to facilitate reading.	**1988-170**
Subsection (a) was amended to require municipal agencies, authorities, and departments, in addition to the governing body, to submit to the municipal planning agency for recommendations any action proposed to be taken subsequent to adoption of a comprehensive plan which relates to enumerated public improvement activities and land use regulations set forth in clauses (1) through (4).	**1988-170**
Clauses (1) and (2) were editorially amended.	**1988-170**
Clause (3) was amended to reference PRD provisions, rather than ordinances, to reflect the changes in Article VII, which require all PRD provisions to be included in a zoning ordinance. Reference to a capital improvements program was added to reflect the importance of the comprehensive plan in terms of planning long-range capital facility needs of the community.	**1988-170**
Clause (4) was added to specifically require the submission for review by the planning agency of proposals regarding sewer and water facilities, which have important implications for growth and development in a municipality.	**1988-170**
Subsection (b) provisions were 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 was extended from 30 days to 45 days to reflect the additional coordination time that would likely be necessary to perform the review.	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Subsection (c), adopted by amendment in the Senate Local Government Committee, was added to clearly indicate that any action of a municipal governing body shall not be invalid or subject to challenge solely on the basis that such action is inconsistent with the comprehensive plan.[3]	**1988-170**
Subsection (d) was added to require that municipal land use ordinances and capital improvement programs generally implement the municipal/multimunicipal comprehensive plan.	**2000-68**
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 defined in Section 301. 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 divided editorially into subsections.	**1988-170**
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 was added as a proposed action that is subject to county and municipal planning agency review. The time for planning agency review was extended from 30 days to 45 days.	**1988-170**
Section 306. Municipal and County Comprehensive Plans.	
The term "municipality" was substituted for a listing of classes of local government. 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, was added.	**1988-170**
Subsection (a) was editorially amended.	**1988-170**

[3] *Commentary:*

> The [Pennsylvania] Supreme Court's decision in *Eves v. Zoning Board of Adjustment,* 401 Pa. 211, 164 A.2d 7 (1960), resulted in a rash of claims asserting that zoning ordinances were invalid because the municipality did not have a comprehensive plan, or because it had failed to follow its comprehensive plan. Subsequent litigation largely erased the effect of the *Eves'* decision. . . . Consistent with the rule that a municipality does not have to adopt a comprehensive plan, § 303(c) of the Code eliminates any possibility of a challenge of the zoning ordinance based on a claim that the ordinance is inconsistent with the comprehensive plan.

Robert S. Ryan, *Pennsylvania Zoning Law and Practice,* George T. Bisel Company, Inc., Philadelphia, Pa., 2005.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Subsection (b) was 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.	**1988-170**
Subsection (c) was added to require counties to consult with municipalities, school districts, municipal authorities, and public utilities, and, for informational purposes, the Center for Local Government Services, in order to better determine future growth needs during the county comprehensive planning process.	**2000-68**
Section 307. State Land Use and Growth Management Report.	
This section was added to require the Center for Local Government Services to issue a Land Use and Growth Management Report at five-year intervals.	**2000-68**

Article IV – Official Map

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 401. Grant of Power.	
The changes in this section and throughout this article were intended to increase the use of the official map as an important planning 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 specifically clarifies that a municipality may prepare an official map for only a portion of the community. Partial mapping should reduce the costs of mapping and, thereby, foster its use as a local option land use planning implementation technique. While these proposals may not result in fully engineered, municipality-wide official maps, it was anticipated that the broad acceptance of this plan implementation technique by municipalities would be far better than the former sporadic use of mapping.	
Subsection (a), clauses (1) through (6), 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.	**1988-170**
Subsection (b) authorizes the governing body to use techniques such as property records, aerial photography, photogrammetric 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.	**1988-170**
Section 402. Adoption of the Official Map and Amendments Thereto.	
Subsection (a) amendments clarify the required review of the proposed official map and accompanying ordinance by the planning agency and other bodies; this subsection also expands the review period by five days (to 45 days) to be consistent with other ordinance review periods contained in the MPC. 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 of 45 days after referral of the map or amendment to the planning agency.	**1988-170**
Subsection (b) cross-references Section 408, relating to notice to other municipalities of a proposed official map or amendment. This subsection also enumerates various public bodies which the governing body or planning agency may request to offer comments and recommendations.	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Subsection (c) 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 was anticipated that minimal additional costs to local governments would be required to implement this recording mandate.	**1988-170**
Section 403. Effect of Approved Plats on Official Map.	
This section was amended editorially and cross-references the amendments to Section 401.	**1988-170**
Section 404. Effect of Official Map on Mapped Streets, Watercourses and Public Grounds.	
This section was amended to reflect editorial changes and the broader scope of this section's title to include both streets and public lands.	**1988-170**
Section 405. Buildings in Mapped Streets, Watercourses or Other Public Grounds.	
The title of this section was broadened to encompass elements of a comprehensive plan that may be reflected in the official map as provided in Section 401. The term "special encroachment" was added to describe a permit to build within the lines of any street, watercourse, or public ground to distinguish this permit from a building or zoning permit. As amended, this section provides that appeal from the refusal of the governing body to grant a special encroachment permit lies with the zoning hearing board, rather than the court, as provided in the prior MPC.[1]	**1988-170**
Section 406. Time Limitations on Reservations for Future Taking.	
This section was not amended.[2]	

[1] *But see* Section 909.1(b)(7) (indicating that appeal lies with governing body).

[2] *Commentary:* 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 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 was left intact. For information on these cases and their implications, see the Local Government Commission publication of October 1987, *United States Supreme Court Decisions in First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, California, and Nollan v. California Coastal Commission, An Analysis* (482 U.S. 304 (1987), and 483 U.S. 825 (1987), respectively).

In a more recent case, the Supreme Court in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency,* 535 U.S. 302, 341 (2002), stated that "[i]t may well be true that any moratorium that lasts for more than one year should be viewed with special skepticism." However, the Court stated that not every delay that exceeds one year is a taking since only state legislation can formulate such a general rule. *Id.* at 341-42. The Court concluded that duration is only one factor that a court should consider, and the *Penn Central* balancing test (*see Penn Central Transportation Company v. New York City,* 438 U.S. 104 (1978)) should be employed in temporary moratorium situations to determine whether there has been a regulatory taking. *Id.* at 342.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 407. Release of Damage Claims or Compensation.	
This section was amended by restructuring the statutory language to facilitate reading. These changes in no way altered the substance of provisions of the prior MPC.	**1988-170**
Section 408. Notice to Other Municipalities.	
The general term "municipality" was substituted in several places in this section, and the review period by the county planning agency was clarified, consistent with other sections of the MPC.	**1988-170**
The major changes in this section 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 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

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 501. Grant of Power.	
The major change in this section, pursuant to Act 170 of 1988, was mandating the submission to the governing body or designated planning agency of all subdivision and land development plats that fall within the definitions in Article I (General Provisions) whenever a municipality enacts a subdivision and land development ordinance. This is consistent with a second major change in Article V, found in Section 503(1.1), which requires that a municipality follow the MPC definition of "land development" with the only exceptions being those noted in that clause. Before Act 170, a municipality could define land development as it wished provided it did not exceed the parameters of the MPC's definition. As a result of Act 170, the MPC's definition governs with the permitted exceptions noted in Section 503(1.1), and the processing of subdivision and land development plans is mandatory. Section 501 also was amended editorially by changing references to a PRD "ordinance" to read PRD "provisions" in order to conform to changes made to Article VII.	**1988-170**
Section 501 was amended further to clarify that actions by the planning agency, if designated by the governing body, on subdivision and land development applications are the same as actions by the governing body.	**2000-68**
Section 502. Jurisdiction of County Planning Agencies; Adoption by Reference of County Subdivision and Land Development Ordinances.	
This section was divided to facilitate reading, and the general terms "municipality" and "municipalities" are used in order to provide consistency with other sections of the MPC.	**1988-170**
Subsection (a) was editorially amended.	**1988-170**
Subsection (b) reduced from 45 days to 30 days the time period for review of subdivision and land development applications by county planning agencies to expedite the plat approval process.	**1988-170**
Subsection (c) 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.	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 502.1. Contiguous Municipalities.	
Subsection (a) directs the county planning commission to offer mediation to agreeable contiguous municipalities with regard to a proposed subdivision or land development and allows the applicant to participate in the mediation.	**2000-68**
Subsection (b) permits a municipality to appear and comment in the proceeding of a contiguous municipality.	**2000-68**
Section 503. Contents of Subdivision and Land Development Ordinance.[1]	
This section sets forth various provisions that may be included in a subdivision and land development ordinance.	
Clause (1) was 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.[2] 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 for services rendered in the review process; however, fees shall not exceed what the consultant would customarily charge the municipality. This clause also references 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).	**1988-170**
Clause (1) also was amended to add landscape architects to engineers and land surveyors as being among those permitted to prepare plats in conformance with a local subdivision or land development ordinance.	**1996-165**
Clause (1) was amended further to clarify that fees charged to the municipality relating to an appeal of a decision on an application may not be considered review fees and may not be charged to the applicant. Minor editorial changes were also made.	**2004-206**
Subclauses (i) and (iii), pertaining to subdivision and land development review fee charges, were amended to: ◈ Require the governing body to submit an itemized bill to the applicant showing the work performed, the person performing the services, and the date and time spent for each task. This would not preclude the governing body from	**2004-206**

[1] *Commentary:* Section 503(1), including subclauses (i), (ii), and (iii), was modified by Act 206 of 2004 to consistently apply the term "professional consultants," which is defined in Section 107(a), as it pertains to subdivision and land development application review fees and dispute notification. *See supra* Article I, note 9, p. 21.

[2] *Commentary: But see Mountain Village v. The Board of Supervisors of Longswamp Township,* 874 A.2d 1 (Pa. 2005) (holding that the 1998 language of Sections 503 and 510 did not authorize a municipality to assess its legal review fees of proposed land development plans to an applicant since the term "professional consultant" did not include "solicitor.") The Supreme Court noted that otherwise applicants would be subjected to "potentially large legal fees over which they have absolutely no control." *Id.* at 10. However, in 2004, Section 107(a) of the MPC was amended to include attorneys in the definition of "professional consultants." *See* note 1 commentary above.

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submitting an interim itemized bill or requiring municipal escrow or other security requirements. ◈ Subsequent to a decision on an application, require the governing body to submit an itemized bill for review fees to the applicant, specifically designated as the "final bill," which must include all review fees incurred through the date of the decision. If additional review is required after the decision, including inspections and other work to satisfy the conditions of approval, the associated fees must be charged to the applicant as "a supplement to the final bill."	
Subclause (i) (also pertaining to review fee dispute notification) was amended[3] by specifying that, should an applicant dispute the amount of any review fees, the applicant, within 45 days of the transmittal of the bill,[4] must notify the municipality and the municipality's professional consultant that such fees are disputed and must explain the basis of the objection to the fees. Failure of an applicant to dispute a bill within the specified 45 days is a waiver of the applicant's right to arbitration of that bill.	**2004-206**
Subclause (ii) (pertaining to initiation of the dispute resolution procedure) was amended by Act 68 of 2000 to require that a professional engaged to resolve a dispute over the amount of application review fees must be of the same profession or discipline as the consultant whose fees are under dispute. Minor editorial changes also were made by Act 206 of 2004.	**2000-68** **2004-206**
Clause (1.1) was added to permit a local option for waiver of the broader definition of land development provided in Section 107(a) (Definitions), in order 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; or to add or convert buildings or rides within the confines of an amusement park.	**1988-170**
Clause (2) was not amended.	
Clause (3) was 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.	**1988-170**
Clause (4) was amended to add language to clarify that any land development which is not immediate may be temporarily excused from requirements for installation of improvements as a condition for final plat approval.	**1988-170**

[3] *Commentary:* Subclause (i) initially had been added by Act 170 of 1988 to provide the applicant with *10 days from the date of the bill* to notify the municipality that he/she disputes the review fee. Subsequently, Act 68 of 2000 amended Subclause (i) to provide the applicant with *14 days from receipt of the invoice* to notify the municipality that he/she disputes the review fee.

[4] *Commentary:* Given that the applicant has 45 days from the transmittal of the bill to notify the municipality and the municipality's professional consultant that the review fees are disputed (*see* Section 503(1)(i)), and given that the applicant has the right, within 45 days of the transmittal of the bill, to request the appointment of an arbitrator (*see* Section 510(g)(2)), it is possible that no time would exist for negotiation between review fee dispute notification and request for appointment of an arbitrator.

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Clause (4.1)[5] was added to assist municipalities that have adopted a subdivision and land development ordinance but have chosen not to enact a zoning ordinance. Under this 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 services.	**1988-170**
Clause (5) was 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.	**1988-170**
Clause (6) was not amended.	
Clause (7) was 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.	**1988-170**
Clause (8) was 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.	**1988-170**
Clause (9)[6] was added 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.	**1988-170**
Clause (10) was added to insure that developments include provisions for reliable, safe, and adequate water supply.	**1988-170**
Clause (11)[7] was added to provide specific standards and prerequisites for mandatory open space and recreation land dedication, the construction of recreational facilities,	**1988-170**

[5] *Commentary:* This clause enables those municipalities which have not enacted a zoning ordinance to provide for uniform setback lines and minimum lot sizes. In *Board of Supervisors of Franklin Township v. Meals,* 57 Pa. Cmwlth. 129, 426 A.2d 1200 (1981), the Court had ruled that these regulations, enacted through a building permit ordinance, were a de facto zoning ordinance and therefore invalid since landowners did not have the benefit of the procedural safeguards found in the MPC. Now, a municipality without a zoning ordinance may still provide for setbacks and minimum lot sizes, which are essentially "zoning principles."

[6] *Commentary:* This amendment was intended to delineate the authority of a municipality to impose prerequisites for subdivision and land development approvals, while equitably providing a developer the opportunity to notify the municipality of either the rejection or acceptance of the conditions. An applicant's rejection of proposed conditions on a preliminary plan deems the conditional approval a rejection. *Koller v. Weisenberg Township,* 871 A.2d 286 (Pa. Cmwlth. 2005) (applying the reasoning in *Bonner v. Upper Makefield Township,* 142 Pa. Cmwlth. 205, 597 A.2d 196 (1991)). However, Section 503(9) does not require that the governing body provide the applicant with notice of plan defects with corresponding citations to the statues or ordinances relied upon, as the language in this section differs from the language in Section 508(2) which concerns denial of a plan. *Id.*

[7] *Commentary:* The provisions of this clause are intended to avoid arbitrary and abusive application of such requirements by establishing basic "ground rules" which are intended to limit municipal discretion. This language was originally proposed by the Task Force, excised in the Senate in its consideration of Senate Bill 535, and reinstated as amended by the House Local Government Committee to become a part of Act 170.

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or fees in lieu of dedication, pursuant to a formally adopted recreation plan in accordance with definite ordinance standards.	
Section 503.1. Water Supply.	
This section was added by amendment to Senate Bill 535 (Act 170 of 1988) in the Senate Local Government Committee at the request of the 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 section does not apply.	**1988-170**
Section 504. Enactment of Subdivision and Land Development Ordinance.	
Subsection (a) was amended to provide that the governing body shall submit to the planning agency a proposed subdivision and land development ordinance 45 rather than 40 days prior to the governing body's holding the required hearing on the ordinance, although no such notice is required if the local planning agency prepared the ordinance. A provision was 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 adequate review time for a proposed subdivision and land development ordinance. The requirements of these new provisions are similar to those in Articles III (Comprehensive Plan), IV (Official Map), and VI (Zoning).	**1988-170**
Subsection (b) was 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 activity for countywide planning purposes.	**1988-170**
Section 505. Enactment of Subdivision and Land Development Ordinance Amendment.	
This section was 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.	**1988-170**
Section 506. Publication, Advertisement and Availability of Ordinances.	
The pre-Act 170 language in and title of Section 506 concerning publication after enactment are deleted. New language was substituted to provide procedures for	**1988-170**

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enacting ordinances and amendments similar to those in the various municipal codes. Reference should be made to Section 506 of this legislation for details of these procedures.

Section 507. Effect of Subdivision and Land Development Ordinance.

This section was not amended.

Section 508. Approval of Plats.

Section 508 was amended to address the situation in which the decision on the approval of a plat has been appealed to the court of common pleas and the court has remanded the matter back to the administrative body. The amendment requires the administrative body to communicate its decision to the applicant within 90 days of the first regular meeting after a final court order remanding the matter back to the administrative body. However, if the first regular meeting occurs more than 30 days from the date when the matter is remanded, the 90-day period starts from the 30th day following the date of the remand. **2000-68**

Clauses (1),[8] (2), and (3) were not amended.

Clause (4) was divided as follows to be less cumbersome and more readable. **1988-170**

Subclause (i) contains no amendments.

Subclause (ii) was amended to:

- clarify its meaning, operation, and applicability in light of the *Livengood* decision.[9,10] Its provisions prohibit a municipality from amending zoning, subdivision, or other governing ordinances or plans that impose different **1988-170**

[8] *Commentary:* In *Sunset Development, Inc. v. Board of Supervisors of East Pikeland Township,* 143 Pa. Cmwlth. 640, 600 A.2d 641 (1992), *allocatur denied,* 610 A.2d 47 (Pa. July 16, 1992), the court acknowledged the intended bifurcation between the oral and written decision making processes concerning Section 508 applications and confirmed the 15-day extension for providing written notice of a decision.

[9] *Commentary:* In *Board of Commissioners of Annville Township v. Livengood,* 44 Pa. Cmwlth. 336, 403 A.2d 1055 (1979), 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 appeared that no express authorization existed in the MPC for such prerequisites, a provision was 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.*

Therefore, Section 508(4)(ii) addresses exclusively the issue of whether changes or amendments to local land use ordinances or plans may be applied to adversely affect the rights of an applicant who has acted and relied upon ordinances or plans in existence 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(9). If the approval is unconditional, Section 508(4)(ii) 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.

[10] *See* Section 503(9).

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requirements or conditions subsequent to either the unconditional or conditional approval of an application for development.	
◈ provide additional circumstances, such as litigation or any water or sewer moratorium, under which an extension of the usual five-year period applies during which changes in the land use ordinances or a plan cannot apply to prevent the completion of a previously approved development application.	**2000-68**
These provisions and prohibitions are an attempt to insure that an applicant is given the greatest opportunity to rely upon the due process procedures under which he, in good faith, originally submitted his property interests.	
Subclauses (iii) and (vi) were editorially amended.	**1988-170**
Subclauses (iv), (v), and (vii) were not amended.	
Clause (5) was not amended.	
Clause (6) was amended to grant immunity from damages to a municipality which issues a building permit to persons who have sought a driveway permit from PennDOT.[11]	**1988-170**
Clause (7) was added to cross-reference the mediation option that was added as Section 908.1. This voluntary option is intended to assist in the resolution of controversies over the approval or disapproval of an application for plat approvals without resorting to litigation.	**1988-170**
Section 509. Completion of Improvements or Guarantee Thereof Prerequisite to Final Plat Approval.	
This cumbersome section was divided with subsections to facilitate reading.	**1988-170**
Subsection (a) was 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.	**1988-170**
◈ eliminate the need to give financial security to a municipality for the costs of any improvements for which PennDOT requires and receives financial security in connection with a highway occupancy permit.	**2000-68**

[11] *Commentary:* Act 46 of 1988 had previously amended this clause with language of an almost identical nature, except that Act 46 noted that "plat approval" rather than "building permit approval" of a municipality would not subject that political subdivision to liability for damages arising from the issuance or denial of a driveway permit by PennDOT. Therefore, some resolution of these differing statutory versions is required.

It would appear that, pursuant to the provisions of the Statutory Construction Act of 1972, 1 Pa.C.S. Section 1501, et seq., the provisions of Act 170 of 1988 should prevail over those of Act 46. Reference to 1 Pa.C.S. Section 1935, "Irreconcilable statutes passed by same General Assembly," reveals that "[w]henever the provisions of two or more statutes enacted finally during the same General Assembly are irreconcilable, the statute latest in date of final enactment . . . shall prevail . . . ."

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Subsection (b) was added to enable a developer to receive financing lending 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.	**1988-170**
Subsections (c) and (d) were not amended.	
Subsection (e) was 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.	**1988-170**
Subsection (f) was 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 was 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.	**1988-170**
This subsection was 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 made by the scheduled date for conclusion of the project.	**1988-170**
Subsection (g) was added to provide 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.	**1988-170**

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Subsections (h), (j), and (k) were editorially amended.	**1988-170**
Subsections (i), (l), and (m) were not amended.[12]	
Section 510. Release from Improvement Bond.	
Subsection (a) was editorially amended.	**1988-170**
Subsection (b) was amended to add a 15-day time period 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.	**1988-170**
Subsections (c), (d), (e), and (f) were not amended.	
Subsection (g), which was added by Act 170 of 1988 and substantially amended by Act 206 of 2004,[13] addresses two separate but related topics. The provisions directly under subsection (g), as well as those in clause (1) and clause (1.1), deal with improvement inspection fee charges[14] and dispute notification with respect to those charges. Provisions in clauses (2) through (5) delineate the dispute arbitration process relative to both subdivision and land development application review fee charges and improvement inspection fee charges. Provisions for review fee charges and dispute notification with respect to those charges are found in Section 503(1).	**1988-170** **2004-206**
Subsection (g), as it pertains to inspection fee charges, provides for reimbursement by an applicant to a municipality for the reasonable and necessary expenses incurred in connection with the inspection of improvements. These expenses, based upon a schedule established by ordinance or resolution, must not exceed the actual fees charged by a professional consultant to the municipality for comparable services. The governing body may not require the applicant to compensate it for any inspection that is duplicative of inspections done by other governmental agencies or public utilities. However, the objecting applicant would have the burden of proving that an inspection is duplicative.	**1988-170** **2004-206**

[12] *Commentary:* A proposed subsection (i) (pertaining to impact fees), which was removed from the final Printer's Number 2556 of Senate Bill 535, constituted the single most controversial aspect of the legislation that ultimately became Act 170. Because of the emotionally charged exchanges and the heated debates over the precise language of the final version of this subsection, the entire bill could have died in the General Assembly on November 30, 1988. However, the final compromise simply removed from the proposed act any reference to impact fees, and both sides of this raging argument were able to accept this resolution of their differences. A more exhaustive discussion of "impact fees" and the events leading to the adoption of Act 209 of 1990 is provided in the commentary to Article V-A (Municipal Capital Improvement).

[13] *Commentary*: Subsection (g) was modified in its entirety by Act 206 of 2004 to consistently apply the term "professional consultants," which is defined in Section 107(a), as it pertains to inspection fee charges and dispute notification, and the dispute arbitration process for review and inspection fees. *See supra* Article I, note 9, p. 21.

[14] *Commentary:* Earlier versions of this subsection proposed that the municipality pay up to 50 percent reimbursement of inspection costs. Under Act 170 of 1988, as amended by Act 206 of 2004, the developer bears the full financial responsibility for all "reasonable and necessary" professional consultant fees incurred by the municipality in the inspection of improvements.

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Clause (1), in part, as it pertains to inspection fee charges, was amended to require the governing body to submit an itemized bill to the applicant showing the work performed in connection with the inspection, the person performing the services, and the date and time spent for each task. Clause (1.1) was added further specifying that, subsequent to the final release of financial security for completion of improvements, the professional consultant shall submit a bill for inspection services, specifically designated as the "final bill," to the governing body,[15] which must include inspection fees incurred through the release of financial security.	**2004-206**
Clause (1), in part, as it pertains to inspection fee dispute notification, also was amended to specify that, should an applicant dispute the amount of any expense in connection with the inspection of improvements, the applicant, within 30 days of transmittal of the bill,[16] must notify the municipality and the municipality's professional consultant that such fees are disputed and must explain the basis of the objections to the fees, in which case the municipality also may not delay or disapprove a request for release from financial security, a subdivision or land development application, or any approval or permit related to development due to the dispute of inspection expenses. Failure of an applicant to dispute a bill within the specified 30 days[17] is a waiver of the applicant's right to arbitration of that bill.	**1988-170** **2004-206**
Clause (2). If the professional consultant and the applicant[18] cannot agree on the amount of [review or inspection] expenses that are reasonable and necessary, then the applicant will have the right, within 45 days of the transmittal of the final bill or supplement to the final bill, to request appointment of another professional consultant as an arbitrator.[19] If the applicant requests the appointment of an arbitrator, the applicant and professional consultant must appoint an arbitrator of the same profession as the professional consultant whose fees are being challenged to review and make a determination on any bills that the applicant has disputed and which remain unresolved.[20, 21]	**1988-170** **2004-206**

[15] *Commentary:* This amendatory language differs from that under Section 503(1), which requires that the governing body submit an itemized bill for subdivision and land development review fees, specifically designated as the "final bill," to the applicant.

[16] *Commentary:* This time parameter differs from that under Section 503(1)(i) for subdivision and land development review fee dispute notification, which provides for 45 days.

[17] *Commentary:* This time parameter differs from the similar amendment under Section 503(1)(i), which provides for 45 days.

[18] *Commentary:* Act 206 of 2004 does not include the municipality in the negotiation over the amount of review or inspection expenses that are reasonable and necessary prior to initiation of the dispute arbitration process.

[19] *Commentary:* Act 206 of 2004 no longer allows for the appointment of an arbitrator for an interim bill.

[20] *Commentary:* Pursuant to Act 206 of 2004, the municipality is no longer involved in the appointment of the arbitrator.

[21] *Commentary:* Pursuant to Act 170 of 1988, no time parameter is specified for the appointment of the arbitrator.

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Clause (3). The arbitrator must render a decision on unresolved disputed bills within 50 days after the date of appointment. Based on the decision of the arbitrator, the applicant and professional consultant must pay, within 60 days, any amounts necessary to implement the decision. If the municipality had paid the professional consultant more than the amount which the arbitrator determined to be reasonable and necessary, the professional consultant, within 60 days of the decision, must reimburse the municipality the excess amount.	**1988-170** **2004-206**
Clause (4). If the professional consultant and applicant cannot agree upon an arbitrator within 20 days of the request for the appointment, then, upon application of either party, the president judge of the court of common pleas must appoint an arbitrator,[22] who "shall be neither the municipality's professional consultant nor any professional consultant who has been retained by, or performed services for, the municipality or the applicant within the preceding five years."	**1988-170** **2004-206**
Clause (5).[23] If the disputed review [or inspection] fees are sustained by the arbitrator, the arbitration fee must be paid by the applicant. If the disputed fees are found to be excessive by $5,000 or less, the arbitration fee must be divided equally between the parties [i.e., the applicant, the professional consultant, and the governing body]. If the disputed fees are found to be excessive by more than $5,000, the arbitrator will have the discretion to assess the arbitration fee in whole or in part against either the applicant or the professional consultant. The governing body and the professional consultant must be parties to the arbitration proceeding.	**2004-206**
Section 511. Remedies to Effect Completion of Improvements.	
This section was not amended.	
Section 512.1. Modifications.	
This section was 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) 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. The modification shall be consistent with the public interest and with the purpose and intent of the ordinance.	**1988-170**

[22] *Commentary:* Pursuant to Act 170 of 1988, no time parameter is specified for this appointment by the president judge.

[23] *Commentary:* Clause (5), which was added by Act 170, was totally replaced by Act 206 of 2004.

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Subsection (b) 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.	**1988-170**
Subsection (c) 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.	**1988-170**
Subsection (d) requires the approving body, either the governing body or the planning agency, to keep a written record of all action on requests for modifications.	**1988-170**
Section 513. Recording Plats and Deeds.	
The title of this section was amended to provide for the recording of deeds when applicable.	**1988-170**
Subsection (a) was amended by Act 170 of 1988 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. It was again amended by Act 68 of 2000 and Act 127 of 2000 to provide further clarification as to when the 90-day period for recording a plat begins. Act 68 specified within 90 days after either the final approval or the date of approval as noted on the plat, whichever is later. Act 127 most recently redefined the beginning time to either within 90 days of final approval, or 90 days after the date of delivery of an approved plat following completion of conditions imposed for such approval, whichever is later. Subsection (b), concerning the effect of the recording of the plat as not in itself constituting a grounds for assessment increases, was not amended.[24]	**1988-170** **2000-68** **2000-127**
Section 514. Effect of Plat Approval on Official Map.	
This section was not amended.	
Section 515. Penalties.	
This section was repealed and the following three sections were added, providing substantial amendatory and related extensive new language.	**1988-170**

[24] *Commentary:* After property is subdivided, the sale of one lot or the addition of improvements will constitute a change in conditions sufficient to allow the reassessment of unsold lots. *Kraushaar v. Wayne County Board of Assessment and Revision of Taxes,* 145 Pa. Cmwlth. 314, 603 A.2d 264 (1992), *appeal denied,* 531 Pa. 649, 612 A.2d 986 (August 24, 1992).

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Section 515.1. Preventive Remedies.	
This section clarifies a major change in the MPC for which similar amendments can be found in Articles VI (Zoning) and VII (Planned Residential Development) related to the civil enforcement powers of municipalities.[25]	
Subsection (a) 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 as well as 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, which was removed with the deletion of Section 515, was reinserted in Subsection 515.1(a).	**1988-170**
Subsection (b) permits a municipality to refuse to issue any permit or grant any approval to develop land that has been developed or subdivided in violation of an ordinance adopted pursuant to this article. 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 applies regardless of 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 an interest in the property.	**1988-170**
Section 515.2. Jurisdiction.	
This section simply states that district justices shall have initial jurisdiction for all proceedings brought under Section 515.3.	**1988-170**
Section 515.3. Enforcement Remedies.	
This section provides for "enforcement remedies" for violations of the subdivision and land development ordinance.	
Subsection (a) provides a major change to the repealed Section 515 by eliminating the criminal penalty for subdivision and land development ordinance violations and substituting a civil judgment therefor.[26] Liability for a violation shall result in a civil	**1988-170**

[25] *Commentary:* The amendments in this article, as well as similar changes in Articles VI (Zoning) and VII (Planned Residential Development), were prompted by Task Force concerns that the provisions of the pre-Act 170 MPC inappropriately imposed criminal sanctions for violations of a subdivision or zoning ordinance. In the case of a zoning violation, for example, in default of the prescribed monetary fine, imprisonment for not more than 60 days could be ordered under the prior MPC. The Task Force, the Senate, and the House all contributed to a substantial rewording of these provisions eliminating all reference to fines and contempt citations and, instead, replaced these terms with civil judgments, imposition of costs and attorney fees, and enforcement of defaults through applicable rules of civil procedure.

[26] *Commentary:* This provision reclassifies subdivision violations from "misdemeanor" to a "civil penalty" to avoid the cumbersome, expensive, and unworkable process necessarily associated with the use of criminal proceedings to enforce subdivision regulations. The authority to institute such proceedings is limited to the municipality and does not extend to private citizens.

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judgment of not more than $500 plus costs and attorney fees incurred by the municipality, but no violation shall be deemed to have occurred nor any judgment commenced, imposed, or paid until a final determination is made. In case the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to applicable rules of civil procedure. 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) authorizes a court of common pleas to grant a stay suspending 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.	**1988-170**
Subsection (c) declares that the municipality has the exclusive right to commence an action for enforcement pursuant to this section.	**1988-170**

Article V-A – Municipal Capital Improvement

Over recent decades, in many areas of the country, there has been an acknowledgment of the need for, or right of, municipalities to impose "impact fees" on new developments for their proportionate share of off-site improvements reasonably related to new development. Act 209 of 1990 was enacted to add Article V-A to the MPC, authorizing and providing a means for implementing off-site transportation impact fees in Pennsylvania. Prior to Act 209, the issue had not been addressed legislatively, although some municipalities had imposed impact fees under the assumption that there existed an inherent authority for them to do so by virtue of their police powers, which allow municipalities to institute measures to maintain the health and safety of their inhabitants.

During the negotiations that resulted in the extensive 1988 revisions and reenactment of the MPC (Act 170), legislative agreement on impact fees could not be reached. Therefore, a proposed Section 509(i), relating to impact fees, was removed from the final printer's number of Senate Bill 535 of 1987, which became Act 170.

With Act 170 containing no specific authorization for impact fees, there was potential for court challenges to existing impact fee ordinances. Most interested parties agreed that legislation on the impact fee issue was desirable; but municipalities understandably favored a degree of flexibility in imposing impact fees greater than that which the builder/developer community found acceptable. An attempt at drafting a compromise impact fee proposal was again undertaken by a group composed of representatives of both sides of this issue. Although a draft apparently resulted, this compromise was not subsequently endorsed and ratified by all interested parties.

By February of 1990, common pleas courts in both Butler and Lancaster Counties had invalidated impact fee ordinances enacted by townships within their jurisdictions. These courts found that neither the MPC nor the general police power found in the First Class Township Code or the Second Class Township Code authorized the imposition of impact fees. Absent specific authorization, such fees were held to constitute an invalid tax, which cannot be imposed solely pursuant to a municipality's general police power. As a result of these common pleas court decisions and the possibility that they might be given statewide applicability, if on appeal the Commonwealth Court affirmed the lower court decisions, it appeared even more evident that some legislative action would need to be forthcoming.

In this context, the aforementioned compromise became the focus of the House Subcommittee on Counties in its effort to develop an impact fee proposal. The legislative vehicle selected was House Bill 1361, which had been introduced and referred to the House Local Government Committee in 1989. From this beginning, members and staff of the subcommittee undertook to draft an acceptable impact fee proposal, it being understood that, absent some legislative action, there existed the potential for a statewide invalidation of all municipal impact fees then being imposed. During the first half of February 1990, the subcommittee conducted two extensive meetings in order to elicit testimony surrounding the matter of impact fees from parties representing various interests and concerns. From the information derived, there resulted substantive amendments to House Bill 1361.

The bill was reported as amended from the House Local Government Committee and, again, was amended on the House floor and in the Senate Local Government Committee. Ultimately, Governor Casey signed House Bill 1361 on December 19 as Act 209 of 1990.

Although an analysis of Act 209 (Article V-A) follows, it may be noted that a very controversial provision was one prohibiting a municipality from requiring that a developer, as a condition for approval of a land development or subdivision, provide off-site improvements or be subject to exactions other than statutorily authorized impact fees. Concern was expressed that this prohibition made the proposal inflexible and deprived municipalities of a mechanism which, it was claimed, previously had proved workable. Conversely, others argued that the traditional practices with regard to the imposition of impact fees or exactions (by negotiation on a case-by-case basis as well as pursuant to ordinance) often led to abuses. Attempts to add language specifically authorizing voluntary agreements for impact fees and exactions failed by a wide margin in both the House and Senate. Proponents of House Bill 1361 argued that the bill was appropriately limited to impact fees which strictly reflected the measurable, proportionate cost of off-site road improvements necessitated by, and attributable and directly related to, new development. Their concern was that municipal costs not be unfairly shifted from the municipality as a whole to the new developments in the municipality.

It should be noted that this article, as originally enacted, was intended to only apply to road improvements. Efforts by some interests to include other modal improvements were unsuccessful. In fact, the definition of "road improvement" specifically prohibits them.[1] However, with the enactment of Act 68 of 2000, reference to multimodal projects was added in Section 505-A(d)(2).

Legislatively, House Bill 1361 (Act 209 of 1990) can reasonably be viewed as a compromise. It seems likely that some municipalities which qualify to adopt an impact fee ordinance will elect not to do so, because of what they consider to be the somewhat burdensome process mandated by the act. Nevertheless, this proposal reflects good faith efforts by various interests (some of whom were often at odds) both to address the fiscal needs of municipalities and to balance the legitimate concerns of builders, developers, and new home buyers, while considering the ramifications of the relevant common pleas and appellate court decisions. That the impact fee proposal embodied in Act 209 generally was thought to be an equitable, viable compromise was indicated by the overwhelming bipartisan legislative support of House Bill 1361's final version, i.e., 38-10 in the Senate and 190-4 in the House.

[1] *See* discussion of the definition for "road improvement" in Section 502-A, p. 55.

Manner in Which Articles and Sections are Impacted	Amendatory Acts*
Section 501-A. Purposes.	
This section acknowledges the difficulty experienced by the public sector in securing revenue to fund capital infrastructure necessitated by new development, while recognizing the need to fairly apportion these costs. Excepting cities of the first and second class and all counties, it sets the scope of the article, clarifying that it applies to municipalities that "have adopted either a municipal or county comprehensive plan, subdivision and land development ordinance, and zoning ordinance."	**1990-209***
Section 502-A. Definitions.	
"Adjusted for family size." Refers to a mechanism to be established by the Pennsylvania Housing Finance Agency to be applied in adjusting the gross income of families with fewer or more than four people, in order to determine their eligibility as low- to moderate-income persons for purposes of determining the applicability of the optional "affordable housing" credit (Section 503-A(a)(5)(i)) against impact fees.	
"Adjusted gross income." Identifies sources and recipients of income considered in establishing who are low- to moderate-income persons such that the developer of housing for these persons would qualify for the optional "affordable housing" credit against impact fees which a municipality may elect to offer.	
"Affordable." Provides a formula to determine whether the monthly charges for housing for low- to moderate-income persons are such that the developer of this housing would qualify for the optional "affordable housing" credit against impact fees which a municipality may elect to offer.	
"Agency." Refers to the Pennsylvania Housing Finance Agency, created by Act 621 of 1959 (Housing Agency Finance Law).	
"Department." Refers to the Department of Community Affairs, replaced by the Department of Community and Economic Development.	
"Existing deficiencies." Refers to deficiencies in existing roads that need to be corrected to accommodate existing traffic levels at a preferred level of service; however, road improvements to correct these deficiencies may not be funded with impact fees, because the deficiencies are not attributable to projected development.	
"Highways, roads, or streets." Identifies those highways, roads, and streets which may be the subject of proposed road improvements listed in the transportation capital improvements plan developed by a municipality intending to adopt an impact fee ordinance. The phrase includes all necessary appurtenances to the highways, roads or streets, such as bridges, rights-of-way, and traffic control devices; and it excludes the interstate highway system.	

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Manner in Which Articles and Sections are Impacted	Amendatory Acts*

"Impact fee." Refers to a fee imposed on new development and paid to a municipality, representing the cost of offsite road improvements necessitated by and attributable to the new development.

"Low- to moderate-income persons." Describes a category of persons identified as low- to moderate-income by applying specified criteria for ascertaining household income for purposes of determining "affordable" housing that might qualify for an optional affordable housing credit.

"New development." Refers to the new construction or development activity which is expected to generate increased traffic in a designated transportation service area and upon which a municipality may impose an impact fee.

"Offsite improvements." Describes an element of what this article refers to as transportation capital improvements. It refers to the location of improvements, specifically public capital improvements that serve more than one development and are not on the property of the landowner or developer filing the "application for development" (*see* Section 107 (Definitions)).

"Onsite improvements." Refers to improvements that may not be considered "offsite" for purposes of utilizing their cost in the computation of impact fees, because they are situate on the property of the landowner or developer filing the "application for development" or because they are on abutting property and are necessary for ingress or egress to the applicant's property and are therefore required by municipal ordinance to be constructed by the applicant.

"Pass-through trip." This is the definition for a traffic trip, which begins and ends outside of a transportation service area, within which impact fees are imposed on new development. Because these trips relate to traffic which "passes through" the transportation service area, they are not considered attributable to new development within that area, and the road improvements necessitated by this pass-through traffic are not attributable to new development within that service area, and may not be used in the calculation of impact fees.

"Road improvement." Describes an element of what this article refers to as a "transportation capital improvement." It refers to the kinds of improvements to certain highways, roads, or streets, located off the site of the new development which will generate increased traffic and thereby create the need for the improvements. This definition makes it clear that impact fees cannot be used to fund certain related projects that should not be confused with or be considered road improvements, such as bicycle lanes, bus lanes, busways, pedestrian ways, railways, or tollways.

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Manner in Which Articles and Sections are Impacted	Amendatory Acts*

"Traffic or transportation engineer or planner." Identifies persons with the requisite state licensing credentials or with a certain educational and professional background who are authorized to be used by and work with the municipal advisory committee in preparing the roadway sufficiency analysis, as a prerequisite to the adoption of a municipality's transportation capital improvements plan and the ultimate imposition of impact fees.

"Transportation capital improvements." Refers to offsite road improvements which are listed in a municipality's transportation capital improvements plan as being necessitated, at least in part, by new development and, which, to that extent, may be funded with impact fees. It is provided that the improvements must have a life expectancy of three or more years, and that the costs of maintenance, operation, and repair associated with these improvements may not be considered in computing impact fees.

"Transportation service area." Refers to the specific area(s) of a municipality (any one of which may not exceed seven square miles), wherein there is a projected need for transportation capital improvements that are to be funded, at least in part, with impact fees. A given area of a municipality may not be in more than one transportation service area.

Section 503-A. Grant of Power.

Subsection (a) provides the authorization for municipalities, other than counties, to adopt an ordinance that imposes an impact fee as a condition precedent to final plat approval under the municipality's subdivision and land development ordinance. The municipality may impose the fee on new development for certain offsite road improvements within a designated transportation service area. Consistent with the provisions of this article and the MPC, an impact fee ordinance must, at a minimum:

Clause (1) – include provisions relating to the determination and imposition of the fees.

Clause (2) – identify which municipal agency, body, or office will administer the ordinance.

Clause (3) – state how and when fees will be paid.

Clause (4) – provide a procedure to issue required credits against or reimbursements of impact fees.

Clause (5) – list which of the authorized optional credits or exemptions are adopted (i.e., credits up to 100 percent against fees for new development or growth serving an overriding public interest or constituting affordable housing for low- and moderate-income persons, and an exception for *de minimis* applications, as defined in the ordinance.

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Manner in Which Articles and Sections are Impacted	Amendatory Acts*

Subsection (b) prohibits municipalities, except as provided for in this article and in other sections of the MPC, from conditioning the approval of a land development or subdivision application on the payment of any impact fee or the imposition of any exaction requiring the payment for, or construction or dedication of, any offsite improvements.

Subsection (c) provides that an impact fee may be imposed only after the adoption of an impact fee ordinance pursuant to this article, except as otherwise provided in subsection (g). The impact fees are to be imposed for a designated service area or areas according to the standards, provisions, and procedures of this article.

Subsection (d) limits the imposition of impact fees to the costs of road improvements identified in the transportation capital improvements plan as being attributable to new development. Also, all other directly related costs, such as costs of land and rights-of-way, engineering, legal and planning costs, and the cost of debt service, may be the subject of impact fees. Specifically excluded as the subject of impact fees are:

Clause (1) – the cost of constructing, acquiring, or expanding municipal facilities not in the transportation capital improvements plan.

Clause (2) – the cost of repairing, operating, or maintaining any capital improvements.

Clause (3) – the cost of bettering or replacing existing capital improvements to serve existing developments in order to meet stricter standards not attributable to new development.

Clause (4) – the cost associated with funding deficiencies in existing capital improvements, which deficiencies have resulted from previous years of inadequate maintenance or capital expenditures.

Clause (5) – the cost of preparing and developing the assumptions, analysis, and plan required by Section 504-A as a precondition to the adoption of an impact fee ordinance, except that a specified proportion of the costs of professional consultants incurred in preparing the roadway sufficiency analysis may be considered as a cost to be utilized in the imposition of impact fees.

Subsection (e) specifically reaffirms a municipality's power to require by ordinance the payment for onsite improvements as a condition to development or subdivision approval.

Subsection (f) prohibits a municipality from delaying or denying an approval or permit required for construction, land development, subdivision, or occupancy because of the failure to complete any project in its capital improvement program.

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Manner in Which Articles and Sections are Impacted	Amendatory Acts*
Subsection (g) provides special provisions for the few municipalities that had adopted impact fee ordinances prior to June 1, 1990, allowing them to conform their ordinances to this article and recalculate the fees previously imposed.	
Subsection (h) provides that two or more municipalities, other than counties, may jointly impose impact fees if they have adopted a joint municipal comprehensive plan pursuant to Article XI (Intergovernmental Cooperative Planning and Implementation Agreements)[2] through a joint municipal authority.[3]	**2000-68**
Section 504-A. Transportation Capital Improvements Plan.	
Subsection (a) directs the municipal governing body, before adopting an impact fee ordinance, to adopt a transportation capital improvements plan, the elements of which are set forth in this section. The municipality is required to provide qualified professionals to aid in both the preparation of the plan and the calculation of the impact fees to be imposed.	
Subsection (b):	
Clause (1) requires the creation of an impact fee advisory committee as a prerequisite to the adoption of an impact fee ordinance. The advisory committee will have the duty of developing land use assumptions and roadway sufficiency analysis studies in a specified geographical area or areas.	
Clause (2) sets the minimum number of appointed members of the advisory committee at seven and the maximum at 15. Members may not be municipal employees or officials; they must reside or conduct business within the municipality; and at least 40 percent of them must be representatives of the real estate, commercial and residential development, and building industries. For the roadway sufficiency analysis, traffic or transportation engineers or planners may be appointed, with the consent of the advisory committee, to serve on the committee.	
Clause (3) authorizes the municipal planning commission to be appointed as the advisory committee with the proviso that a sufficient number of additional members be added to satisfy the "40 percent requirement" stated in clause (2).	
Clause (4) prevents a challenge to the composition of the advisory committee from being a cause for invalidating an impact fee ordinance, unless legal action is instituted within 90 days of the committee's first public meeting.	

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[2] Article XI was formerly entitled "Joint Municipal Planning Commissions."

[3] *See supra* Chapter 2 (Chronological Summary of Amendments), note 8, p. 10.

Manner in Which Articles and Sections are Impacted	Amendatory Acts*

Clause (5) emphasizes the "advisory" nature of the advisory committee, and lists the committee's duties, which are to:

Subclause (i) – make recommendations concerning land use assumptions, the development of comprehensive road improvements, and impact fees.

Subclause (ii) – prepare and submit a report to the municipality with recommendations concerning a capital improvement program.

Subclause (iii) – report annually to the municipality the results of its monitoring and evaluation of the capital improvement program and the assessment of impact fees.

Subclause (iv) – give advice on the need to revise or update the land use assumptions, capital improvement program, or impact fees.

Subsection (c) addresses the development of land use assumptions as the first step in producing a transportation capital improvements plan.

Clause (1) directs the advisory committee to develop land use assumptions about future growth and development in designated areas of the municipality. The advisory committee must hold a public hearing to consider proposed land use assumptions before it presents a written report to the municipality containing not only the findings from the public hearing, but also the committee's recommendations, which the governing body shall approve, disapprove, or modify.

Clause (2) identifies the subjects that must be addressed in the land use assumptions report, which include:

Subclause (i) – a description of existing land uses and the highways, roads, and streets within the designated area or areas.

Subclause (ii) – predicted changes in land use, densities and intensities of development, and population growth, to the extent they will affect the level of traffic in the designated area for, at least, a five-year period. Also provided are the bases on which the projections are to be made: analysis of population growth during the prior five years, current zoning regulations, approved subdivision and land developments, and the future land use plan contained within the comprehensive plan; reference may be made to professional studies and reports.

Clause (3) requires the advisory committee, at least 30 days before the public hearing required by clause (1), to forward proposed land use assumptions to, and seek comments from, the county planning agency, all contiguous municipalities, and the local school district.

Subsection (d) addresses the preparation of the roadway sufficiency analysis as the second step in producing a transportation capital improvements plan.

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Manner in Which Articles and Sections are Impacted	Amendatory Acts*
Clause (1) directs the advisory committee, with the assistance of a municipally appointed traffic or transportation engineer or planner, to prepare or have prepared, for the area or areas of the municipality designated in the resolution creating the advisory committee, an analysis establishing both the existing sufficiency of highways, roads, and streets on which improvements are anticipated as a result of projected development and the preferred level of service. Municipalities may act cooperatively in commissioning an engineer or planner to assist in preparing a multimunicipal roadway sufficiency analysis. Express requirements for the roadway sufficiency analysis include:	**2000-68**
Subclause (i) – establishment of existing traffic volumes and the existing level of service.	
Subclauses (ii), (iii), and (iv) – identification of the preferred level of service using certain nationally recognized categories of road service. Where the existing level of service is below the preferred level of service, identification of existing deficiencies and the road improvements required to correct them in order to bring the existing level of service up to the preferred level are required.	
Subclause (v) – projection of anticipated traffic volumes and a separate determination of pass-through trips for, at least, five years.	
Subclause (vi) – prediction of road deficiencies that will result from pass-through trips.	
Clause (2) requires the advisory committee to submit the roadway sufficiency analysis to the municipality for its approval, disapproval, or modification.	
Subsection (e) provides for recommendations for and approval of a transportation capital improvements plan as a prerequisite to the adoption of an impact fee ordinance.	
Clause (1) requires the advisory committee to recommend the boundaries of the transportation service area or areas and the potential road improvements needed therein to remedy existing deficiencies and accommodate future traffic volumes. The transportation capital improvements plan must include:	
Subclauses (i), (ii), and (iii) – a description of or plan specifying the affected highways, roads, and streets, along with each of the following categories of road improvements needed to maintain the preferred level of service: (i) those required to either remedy existing deficiencies or meet stricter safety, efficiency, environmental, or regulatory standards not attributable to new development; (ii) those attributable to pass-through traffic; and (iii) those attributable solely to projected future development.	
Subclause (iv) – the projected costs for the categories of road improvements identified in subclauses (i), (ii), and (iii), with a 50 percent cap on the cost of improvements to designated state highways, which may be included in the capital improvements plan.	**2000-68**

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Manner in Which Articles and Sections are Impacted	Amendatory Acts*
Subclauses (v) and (vi) – the projected construction timetable, proposed budget, and proposed source of revenue (including federal, state, municipal, and impact fee funds) for each road improvement project in the plan.	
Clause (2) restricts the use of impact fees; if the need for a project is solely attributable to existing deficiencies or pass-through traffic, it may not be funded with impact fees.	
Clause (3) requires the advisory committee to make its recommended transportation capital improvements plan available for public inspection for 10 days before holding a required public hearing. Thereafter, the advisory committee or its representatives must make a presentation of the plan at a public meeting of the municipal governing body. The municipal governing body, subsequently, must review the public comments to the advisory committee's proposed plan and may make changes to the plan prior to its approval.	
Clause (4), with Subclauses (i), (ii), (iii), (iv), (v), and (vi), provides that the governing body may request the advisory committee to review and recommend changes to the transportation capital improvements plan and impact fee charges, but not more often than once annually, only on the following reasons: (i) subsequent development in the municipality; (ii) completion of capital improvements contained in the transportation capital improvements plan; (iii) delays in the construction for which the municipality is not responsible; (iv) changes in land use assumptions; (v) changes in the estimated costs of the proposed improvements, which can be recalculated using a construction cost index, to revise the cost of transportation capital improvements; and (vi) significant changes in projected revenue from all sources to fund the construction of improvements.	**2000-68** **2000-68**
Subsection (f) confirms that the jurisdiction of the Pennsylvania Department of Transportation (PennDOT) will not be altered by the use of impact fees to fund the construction of improvements on roads and highways under PennDOT's jurisdiction. It also requires approval of the United States Department of Transportation or PennDOT before the improvements can be constructed on Federal-aid or State highways.	
Subsection (g) permits the appointment of a joint impact fee advisory committee.	**2000-68**
Section 505-A. Establishment and Administration of Impact Fees.	
Subsection (a) describes the methodology for computing a particular impact fee.	
Clause (1) presents the methodology for arriving at the per trip cost for road improvements attributable to new development within the transportation service area. The total cost of all road improvements attributable to new development within a transportation service area, as calculated pursuant to Section 504-A(e)(1)(iv)(C),	**2000-68**

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Manner in Which Articles and Sections are Impacted	Amendatory Acts*
is divided by the number of peak hour trips generated by all new development consistent with adopted land use assumptions and calculated according to the latest edition of the "Trip Generation Manual" published by the Institute of Transportation Engineers.	
Clause (2) builds on Clause (1); it provides when and how to determine the amount of the impact fee for a specific new development or subdivision. The fee must be determined as of the date of preliminary land development or subdivision approval. The fee is the product of the previously established per trip cost for road improvements attributable to new development within the transportation service area multiplied by the estimated number of <u>"peak hour"</u> trips to be generated by the specific new development against which the fee will be imposed, using generally accepted traffic engineering standards to make the estimate.	**2000-68**
Clause (3) provides a means to ascertain if an increase or decrease from the impact fee schedule is justified for a new nonresidential development. A special transportation study may be authorized or required pursuant to circumstances set forth in a municipal ordinance, but a special study will not be required unless the development is projected to cause a deviation from the land use assumptions resulting in increased density, intensity, or trip generation. A developer <u>or municipality</u> may voluntarily submit a study for a proposed development or a study showing actual trips generated after construction for use in any appeal of the imposed impact fee.	**2000-68**
Subsection (b) requires that the boundaries of, and the impact fee schedule for, each transportation service area within a municipality be set forth in an impact fee ordinance.[4] The ordinance must be made available for public inspection for at least 10 working days before its adoption at a public meeting.	
Subsection (c):	
Clause (1) requires two published notices of a municipality's intention to adopt an impact fee ordinance; the first shall not occur before the adoption of the resolution establishing the advisory committee, and the second must be published between one and three weeks thereafter.	
Clause (2) allows a municipality to include provisions for the retroactive application of impact fees in its ordinance because of the time that may be required to develop land use assumptions, prepare the road sufficiency analysis, and complete the transportation capital improvements plan. The retroactive period may not exceed 18 months after the adoption of the advisory committee resolution. The fee may be applied retroactively to any new development for which preliminary or tentative	

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[4] *See* Section 503-A(a)(1) through (5).

Manner in Which Articles and Sections are Impacted	Amendatory Acts*
applications for land development, subdivision, or PRD were made on or after the first published notice referred to in Clause (1). An impact fee "retroactively" imposed may not exceed $1,000 per anticipated peak hour trip. Clause (3) prohibits a municipality from delaying action on a land development, subdivision, or PRD application because it is considering adopting an impact fee ordinance. Also, retroactive application is denied for any impact fee ordinance adopted more than 18 months after the adoption of the advisory committee resolution. An impact fee ordinance adopted more than 18 months after the adoption of the advisory committee resolution will not be applicable to plats submitted for preliminary or tentative approval prior to the legal publication of the proposed impact fee ordinance. A municipality must refund impact fees that have been collected on new development for which plats were submitted for preliminary or tentative approval prior to the legal publication of the proposed impact fee ordinance, if the impact fee ordinance was not adopted within 18 months of the adoption of the advisory committee resolution, unless the adoption of the impact fee ordinance was delayed due to litigation. Subsection (d) requires that a separate interest-bearing account be established for the deposit of impact fees collected within each transportation service area. The fees collected in a transportation service area may only be spent on the portion of projects within that area which the transportation capital improvements plan identifies as being funded with impact fees. However, criteria are established whereby fees paid by an applicant may be used for projects other than those in the capital improvements plan, or a credit may be allowed against impact fees for any construction projects not contained in the capital improvements plan that are performed at the applicant's expense,[5] provided that the applicant agrees, the projects relieve traffic congestion or remove vehicle trips, and the municipality amends its capital improvement plan to provide replacement of the collected impact fees. Earned interest becomes a part of the account and the municipality must annually provide an accounting, showing the funds collected, the source, total interest, and the amount expended. Also, provision is made for public notice of this accounting and its distribution to the advisory committee.	**2000-68**
Subsection (e) specifies that impact fees are to be paid at the time a building permit is issued. Generally, a municipality may not require a guarantee of financial security for the payment of an impact fee, but it may require security for those improvements to be constructed by the applicant.	

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[5] These options may include multimodal projects. *See also* discussion in third paragraph, p. 53.

Manner in Which Articles and Sections are Impacted	Amendatory Acts*
Subsection (f) identifies when a credit against the impact fee is mandated, as contrasted with the optional credits/exemption in Section 503-A(a)(5). Credits are mandated when an applicant dedicates land for a future right-of-way or for the realignment or widening of existing roadways, or constructs road improvements contained in the transportation capital improvements plan. In the case of dedication of land, the credit will equal its fair market value as of the date of submission of the land development or subdivision application; for capital improvements, it will be the amount allocated in the transportation capital improvements plan.	
Subsection (g) states that refunds on previously paid impact fees, including accrued interest, must be made:	
Clause (1) – if there are undistributed funds after the completion or termination of a capital improvements plan. After one year has elapsed from the date of mailing the required written notice of the available refunds to each person who paid an impact fee, the municipality can transfer the funds to any other municipal account, if funds remain unclaimed, without any further obligation to provide a refund.	
Clause (2) – upon written request to the municipality, for the proportionate amount of impact fees, with interest, attributable to road transportation capital improvements not commenced within three years of the scheduled construction date for these improvements.	
Clause (3) – when the actual cost of a transportation capital improvement is less than 95 percent of the costs attributable to the improvement in the capital improvements plan. The refund will be the pro-rata difference, with interest, between budgeted and actual costs.	
Clause (4) – when the new development for which impact fees were paid is not commenced prior to the expiration of building permits or if there is an alteration of the permit which results in a decrease in the amount of the fees.	
<u>Subsection (h) authorizes an additional impact fee on certain new developments that generate 1,000 or more new peak hour trips.</u>	**2000-68**
Section 506-A. Appeals.	
Subsection (a) places jurisdiction in the common pleas court for challenges of enumerated matters relating to impact fees.	
Subsection (b) authorizes the court to appoint a master to conduct a hearing and take testimony and return the record and transcript, together with a report and recommendations, or to appoint a master to conduct a nonrecord hearing and to make	

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Manner in Which Articles and Sections are Impacted	Amendatory Acts*
recommendations to the court. In the latter case, either party may demand an additional hearing.	
Subsection (c) provides that costs incurred by parties in an appeal are the separate responsibility of the parties.	
Section 507-A. Prerequisites for Assessing Sewer and Water Tap-In Fees.	
Subsection (a) provides that if a municipality charges a fee for connecting with a municipally-owned water or sewer system, the fee must be calculated as provided for in the Municipality Authorities Act of 1945, as amended by Act 203 of 1990.	
Subsection (b) identifies a situation in which a property owner has the right to construct extensions or make connections and install customer facilities himself or through a subcontractor as provided for in the Municipality Authorities Act.	
Subsection (c) provides that a municipality must give reimbursement in accordance with the Municipality Authorities Act to property owners who construct or cause construction of additions, expansions, or extensions of municipal sewer or water systems that provide excess capacity for future development on other people's lands.	
Section 508-A. Joint Municipal Impact Fee Ordinance.	**2000-68**
Subsection (a) permits municipalities that have adopted a joint municipal comprehensive plan to also enact, amend, and repeal a joint transportation impact fee ordinance.	
Subsection (b) requires that procedures set forth in Article V-A be applicable to the enactment of a joint municipal impact fee ordinance.	
Subsection (c) requires each participating municipality to approve the advisory committee and adopt the land use assumptions, roadway sufficiency analysis, capital improvement plan, and ordinances and amendments; no ordinance may become effective until it has been adopted by all participating municipalities.	

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Article VI – Zoning

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 601. General Powers.	
This section was not amended.	
Section 602. County Powers.	
This section was editorially amended to provide for the use of the general terms "municipality" and "municipalities" for consistency with other sections of the MPC.	**1988-170**
Section 602.1. County Review; Dispute Resolution.	
This added section directs the county planning commission to offer a mediation option to agreeable contiguous municipalities with regard to disputes over the effect of one municipality's zoning on citizens in an adjoining municipality, but all municipalities must agree to the mediation.	**2000-68**
Section 603. Ordinance Provisions.	
Subsection (a) is an introductory statement emphasizing that zoning ordinances should reflect the policy goals of the statement of community development objectives required in Section 606.[1]	**1988-170**
Subsection (b), which sets forth the authorized regulatory powers or provisions that a zoning ordinance "may permit, prohibit, regulate, restrict and determine," includes editorial and substantive amendments to the provisions of the pre-Act 170 subsection (a). The introductory language was amended to acknowledge that various laws regulating mining and agriculture may supersede and preempt zoning ordinances promulgated pursuant to the MPC.	**1988-170** **2000-68**
Clauses (1), (2), and (3) were editorially amended. Clause (4) was not amended.	**1988-170**
Clause (5), which was identical to Section 603(b)(5) of the pre-Act 170 MPC, was amended to highlight the importance of preserving *historic resources* and *prime* agricultural land in addition to natural resources and agricultural activities.	**2000-68**

[1] *Commentary:* This subsection was amended in the House Local Government Committee and may be related to Commonwealth Court opinions in *Appeal of DeBotton,* 81 Pa. Cmwlth. 513, 474 A.2d 706 (1984), and *McClimans v. Board of Supervisors of Shenango Township,* 107 Pa. Cmwlth. 542, 529 A.2d 562 (1987). In *DeBotton*, the court held, in part, that invalidation of the township zoning ordinance merely because it did not provide a cross-reference to the township land use plan "would be a drastic remedy" and "would be to raise form over substance," since the township had substantially complied with the Section 606 requisites by having adopted a land use plan that contained a statement of community development objectives. 474 A.2d at 712. The *McClimans'* court further rationalized, "If a comprehensive plan exists, it is likely that the primary ends of the MPC—to provide for planned, rational, non-arbitrary zoning—is indeed being achieved by the municipality involved. Finding a zoning ordinance to be invalid [merely because there is no cross-reference to the comprehensive plan] would in fact thwart the MPC's goal of providing for rational, planned development." 529 A.2d at 565.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Subsection (c), which is based on a renumbered subsection (b) of the pre-Act 170 MPC, was editorially and substantively amended to authorize additional zoning functions that may or shall be included in the zoning ordinance.	
Clause (1) was editorially amended.	**1988-170**
Clause (2) was amended by Act 170 of 1988 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. The clause was amended further by Act 68 of 2000 to stipulate that conditions which are attached to an approval may not relate to offsite transportation and road improvements.	**1988-170** **2000-68**
Clause (2.1), which pertained to applicability of ordinance amendments to special exceptions and conditional uses, was added by Act 130 of 1982 and editorially amended by Act 170 of 1988. The clause subsequently was repealed and simultaneously added as Section 917 by Act 68 of 2000.	**1988-170** **2000-68**
Clause (2.2) was added to enable municipalities to implement the TDR concept through zoning.[2]	**1988-170**
Clauses (3) and (4) were editorially amended.	**1988-170**
Clause (5) was amended in a manner similar to Section 503(5) to provide general language to encourage use of innovative zoning techniques to promote flexibility, economy, and ingenuity in development.	**1988-170**
Clause (6) was 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.	**1988-170**
Clause (7) was added to enable municipalities to promote and preserve prime agricultural land, environmentally sensitive areas, and areas of historic significance.	**2000-68**
Subsection (d) was 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.	**1988-170**

[2] *Commentary:* This optional, voluntary system was enacted due to the probable negative legal consequences that a mandatory system would have in Pennsylvania. It was thought that inclusion of this innovative plan implementation technique in the MPC might encourage municipalities to try this new concept, and it was also believed that TDRs might be relied on to counter a possible "takings" argument. Additional TDR provisions are found in Sections 107(a), 605(4), 619.1, 702.1, 703-A, 909.1(a)(7), and 1105(b)(2).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Subsection (e) was added to limit the restrictions imposed by zoning ordinances regarding the display of religious symbols on property being used for religious purposes. Such restrictions must show a substantial government interest that is consistent with free expression considerations.	**1988-170**
Subsection (f), which was added by Act 131 of 1992, denies municipalities authorization to adopt zoning ordinances which unreasonably restrict forestry activities. The subsection was amended further by Act 68 of 2000, which provided that forestry activities are to be a permitted use by right in all zoning districts for the purpose of encouraging maintenance and management of forested or wooded open space as a sound and economically viable use of forested land throughout the Commonwealth.	**1992-131** **2000-68**
Clause (g)(1) was added to require[3] zoning ordinances to protect prime agricultural land and promote the creation of agricultural security areas.	**2000-68**
Clause (g)(2) was added to require zoning ordinances to protect natural and historic features and resources.	**2000-68**
Subsection (h) was added to require zoning ordinances to encourage the development and continuing viability of agricultural operations and to prohibit zoning ordinances that restrict existing agricultural operations in traditional agricultural areas from expanding or changing their operations unless the agricultural operation will have a direct adverse effect on public health and safety.	**2000-68**
Subsection (i) was added to require zoning ordinances to provide for the reasonable development of minerals in each municipality.	**2000-68**
Subsection (j) was added to require that zoning ordinances adopted by municipalities are generally consistent with the municipal or multimunicipal comprehensive plan, and that, if a municipality amends its zoning ordinance in a manner not generally consistent with its comprehensive plan, it shall concurrently amend its comprehensive plan to maintain general consistency.	**2000-68**
Subsection (k) was added to allow a municipality to amend its comprehensive plan at any time, provided that the plan remains generally consistent with the county comprehensive plan and compatible with the comprehensive plans of contiguous municipalities.	**2000-68**
Subsection (l) was added to require zoning ordinances to permit no-impact home-based businesses, as defined in Section 107(a), in all residential zones of the municipality as a use permitted by right, except that such permission shall not supersede any deed restriction, covenant, or agreement restricting the use of land, nor any master deed, bylaw, or other document applicable to a common interest ownership community.	**2002-43**

[3] *Commentary:* Please note that under Section 603(c)(7), it is provided that "*[z]oning ordinances may contain…provisions to promote and preserve prime agricultural land,* environmentally sensitive areas and areas of historic significance." (Emphasis added.) By contrast, under Section 603(g)(1), it is provided that "*[z]oning ordinances shall protect prime agricultural land* and may promote the establishment of agricultural security areas." (Emphasis added.)

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 603.1. Interpretation of Ordinance Provisions.	
This section was 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 must be interpreted in favor of the property owner and against any implied extension of the restriction.[4]	**1988-170**
Section 604. Zoning Purposes.	
Clause (1) was amended to include more specific reference to recreation, solar access, historic preservation, and the environmental protection of natural features, including forest, wetlands, and aquifers, in order to reflect the importance of using zoning concepts to guard these resources. The term "emergency management" was used to reflect a broader scope of activities than "civil defense." Language was 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.	**1988-170**
Clause (2) was amended to delete a sentence that required zoning ordinances to be made in accordance with an overall program and consideration of the character of the municipality. Similar language is included in Section 603(a) by reference to a statement of community objectives.	**1988-170**
Clause (3) was not amended.	
Clause (4) was added to emphasize the importance of providing for varied types of housing through zoning. The clause states that a municipality shall provide for "all basic forms of housing" including single and two-family dwellings, mobile homes,	**1988-170**

[4] *Commentary:* It should be noted that this provision was not contemplated to affect a companion rule which holds that an ordinance granting rights with respect to a nonconforming use should be strictly construed against, not in favor of, the landowner. This provision applies to the interpretation of restrictions in zoning ordinances generally, and it restates the existing judicial rule of strict construction in favor of the landowner; the provision was not intended to, and does not modify, the judicial rules of construction concerning nonconformances. This provision restates current law as clearly and unequivocally enunciated by the appellate courts of the Commonwealth in numerous decisions. Municipal officials should realize that where doubt exists as to the legislative intention of the governing body, the statutory language will be judicially interpreted in favor of the property owner and against any implied extension of the restriction. *See, e.g., Albert v. Zoning Hearing Board of North Abington Township,* 578 Pa. 439, 854 A.2d 401 (2004) ("[z]oning ordinances are to be liberally construed and interpreted broadly to permit a landowner the broadest possible use of her land"); *Upper Salford Township v. Collins,* 542 Pa. 608, 669 A.2d 335 (1995) ("[z]oning ordinances are to be liberally construed to allow the broadest possible use of land"); *Appeal of Haff,* 68 Pa. Cmwlth. 112, 448 A.2d 120 (1982) ("[i]n interpreting zoning ordinance provisions, restrictive language must be strictly construed so as to allow the landowner the least restrictive use of his property"); *Gilbert v. Montgomery Township Zoning Hearing Board,* 58 Pa. Cmwlth. 296, 427 A.2d 776 (1981) ("[a]bsent express limitation, permissive phrases in zoning ordinances are given their broadest meaning, and ambiguities are resolved in favor of the landowner"); *Cook v. Marple Township Zoning Hearing Board,* 55 Pa. Cmwlth. 535, 423 A.2d 1105 (1980) (undefined terms in an ordinance "must be taken in the broadest sense so as to accord the applicant benefit of the least restricted use and enjoyment of his land").

Manner in Which Articles and Sections are Impacted	Amendatory Acts
and mobile home parks, along with "a reasonable range of multi-family dwellings in various arrangements." It also provides that no zoning ordinance shall be declared invalid for failing to list other classifications of dwellings.[5]	
Clause (5) was added to reflect intent to foster inclusionary rather than exclusionary zoning ordinances by providing for, as a zoning purpose, the accommodation of population and employment growth and the development of a variety of residential and nonresidential uses.	**1988-170**
Section 605. Classifications.	
This section specifies that a municipality, other than a county, which enacts a zoning ordinance may not leave any portion of the municipality unzoned. The section was amended to further provide for additional elements and criteria for zoning classifications.	

[5] *Commentary:* The legislative intent appears to be consonant with judicial standards established by Pennsylvania appellate courts. According to *Pennsylvania Zoning Law and Practice,* Section 3.5.2, "The [court] decisions have accepted multi-family dwellings and mobile home parks as 'basic forms' of housing which are protected under exclusionary zoning principles . . . , but generally have rejected attempts to obtain protection for uses described in very specific terms (e.g., high-rise apartments, quadruplex units). The major issue has been the status of townhouses, . . ."[a] on which the Summary of Pennsylvania Jurisprudence, Section 24:45, states:[b]

> Zoning ordinances which exclude townhouses may be found unconstitutional, such dwellings having been recognized as reasonable and legitimate residential uses. The total prohibition of townhouses is ordinarily valid only if the zoning municipality can demonstrate a police power justification.
>
> On the other hand, a zoning ordinance which provides for a reasonable number of multifamily dwellings is not exclusionary solely on the ground that it does not provide specifically for townhouses, particularly where a fair construction of the regulation includes townhouses under the term "multifamily dwelling" or the like, as used therein. An ordinance provision allowing multifamily dwellings that includes restrictions which make the construction of townhouses impossible, however, cannot serve to preclude a finding that the enactment is exclusionary as to townhouses.
>
> The invalidity of a zoning ordinance that totally excludes townhouses is not cured by a provision allowing condominiums.

[a] Robert S. Ryan, *Pennsylvania Zoning Law and Practice,* George T. Bisel Company, Inc., Philadelphia, Pennsylvania, 2005.
[b] 7 Summary of Pennsylvania Jurisprudence 2d, *Property* § 24:45, Thomson/West, 2005 (footnotes omitted).

In *Fernley v. Board of Supervisors of Schuylkill Township,* 509 Pa. 413, 502 A.2d 585 (1985), the Pennsylvania Supreme Court struck down an ordinance that totally excluded apartments within the community as unconstitutional because the municipality could show no "legitimate public purpose" for the total ban on apartments. The court noted that the "fair share" analysis was not applicable to zoning regulations that totally prohibited a basic type of housing; such an analysis was only applicable to regulations that effected a partial ban on a particular use. Eight years earlier, in *Surrick v. Zoning Hearing Board of Upper Providence Township,* 476 Pa. 182, 189, 382 A.2d 105, 108 (1977), the Court noted as follows: "To implement these concepts, we adopted the 'fair share' principle, which requires local political units to plan for and provide land-use regulations which meet the legitimate needs of all categories of people who may desire to live within its boundaries." Among the factors involved in the "fair share" analysis are the percentage of land available for a requested use, current population growth and pressures within the municipality and surrounding region, and the amount of undeveloped land in a community. This decisional law prevents the exclusion of fundamental housing types. Clause (4) is designed to adopt this approach, while at the same time providing that a failure to make provision for forms of housing not listed in the clause will not invalidate an entire ordinance.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Clauses (1) and (1.1) were editorially amended.	**1988-170**
Clause (2) was amended to specify other items that may be accommodated through additional classifications 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.	**1988-170**
Clause (3) was added to encourage innovative and flexible development techniques included in Sections 603(c)(5) and 603(c)(6).	**1988-170**
Clause (4) was added to permit TDR provisions, which were added in Section 603(c)(2.2).	**1988-170**
Section 606. Statement of Community Development Objectives.	
This section was amended to emphasize the "policy goals" of the municipality as set forth in the required statement of community development objectives. It recognizes that due to changing circumstances, new policy goals may be developed, and revised zoning regulations consistent with these goals may be adopted, without necessarily requiring a new comprehensive plan or a revised overall statement of community development objectives. The statement may be either from the comprehensive plan or part of a statement of legislative findings. The provision for an alternative statement of community development objectives within a statement of legislative findings was also amended to offer additional guidance to governing bodies desiring to prepare such a statement.	**1988-170**
Section 607. Preparation of the Proposed Zoning Ordinance.	
This section was subdivided to facilitate reading, and the general term "municipality" is used to be consistent with other sections of the MPC.	**1988-170**
Subsection (a) was amended to reemphasize that the zoning ordinance shall be prepared by the local planning agency, if requested by the governing body.	**1988-170**
Subsection (b) was amended to require the planning agency to hold one or more public meetings, rather than hearings, during preparation of the zoning ordinance. This avoids the need to have a stenographic record and formal notice, while still providing the public an opportunity to comment on the proposed ordinance.	**1988-170**
Subsections (c) and (d) were not amended.	
Subsection (e) was 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. Pre-Act 170 provisions prohibited 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 permits the local planning agency to submit the proposed ordinance to either (1) the local governing body and the county planning agency simultaneously, or	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
(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 was amended to require the governing body, in the event of multiple hearings, to vote on enactment within 90 days after the last public hearing. 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 set forth in Articles III (Comprehensive Plan), IV (Official Map), and V (Subdivision and Land Development).	**1988-170**
Section 608.1. Municipal Authorities and Water Companies.	
This section was added to better define the relationship between a water, sanitary sewer, or storm sewer service provider and the municipality that the service directly affects, as well as to affirm the authority of the service provider and the PUC or other Federal or State agencies or statutes.	
Subsection (a) adds a requirement that a municipal authority, a water company, or any other municipality that plans to expand water, sanitary sewer, or storm sewer service via a new main extension to a proposed development which has not received any municipal approvals, provide notice of its intention, along with an opportunity for the municipality to provide comment on whether the proposed expansion is generally consistent with local zoning.	**2000-68**
Subsection (b) states that the purpose of the aforementioned notice is to provide an opportunity to share information regarding how the decision to expand service may potentially affect land use planning of municipalities.	**2000-68**
Subsection (c) affirms that nothing in this section may limit the right of a municipal authority, a water company, or any other municipality to expand service as otherwise allowed by law.	**2000-68**
Subsection (d) also asserts that, with stated exceptions, nothing in the act limits the authority of the PUC over public utility facilities and services.	**2000-68**
Subsection (e) provides definitions for "decision to expand service within the municipality" and "water company" as used in this section.	**2000-68**
Subsection (f) affirms that a municipality may not regulate the allocation or withdrawal of water resources otherwise regulated.	**2000-68**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
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.	**1988-170**
Subsection (a) was amended to cross-reference Section 607 as optional procedures for enactment of zoning ordinance amendments.	**1988-170**
Subsection (b) was first amended by Act 170 of 1988 to require that notice of proposed amendments to a zoning map be conspicuously posted at points along the perimeter of the tract affected at least one week prior to the date of the public hearing on the proposed amendment.[6] The subsection was amended further by Act 38 of 1994 to make it no longer necessary to post the entire perimeter of the affected tract, so long as notice is conspicuously posted at points deemed sufficient by the municipality to give notice of the hearing to interested persons. Most recently, the subsection was subdivided into two clauses by Act 2 of 2002:	**1988-170** **1994-38** **2002-2**
Clause (1) contains the existing amended language from subsection (b).	
Clause (2) was added in the form of two subclauses:	**2002-2**
Subclause (i) requires that in the event of a proposed zoning ordinance amendment involving a zoning map change, the municipality send notice of the public hearing to affected property owners by first class mail at least 30 days prior to the date of the hearing, in addition to existing posting requisites.	
Subclause (ii) provides that this clause shall not apply when the rezoning constitutes a comprehensive rezoning.	
Subsections (c), (d) and (e)[7] were editorially amended.	**1988-170**
Subsection (f) was added to reference the mediation option offered in Section 908.1. This voluntary option is intended to facilitate the resolution of controversies over the approval or disapproval of zoning applications without resort to litigation. However, Section 908.1 prohibits the zoning hearing board from initiating mediation or participating as a mediating party.	**1988-170**

[6] *Commentary:* Prior to the 1994 amendment to Section 609(b) that deleted the requirement for the perimeter of the tract to be posted, Section 609(b) was applied in *Johnson v. Zoning Hearing Board of Stroud Township,* 144 Pa. Cmwlth. 479, 601 A.2d 927 (1992), *appeal denied,* 532 Pa. 648, 614 A.2d 1144 (1992), to invalidate an enacted zoning amendment for failure to post notice of the proposed amendments around the perimeter of the tract to be rezoned, even the heavily wooded rear portion of the property, and even though notices were posted along a portion of the tract that abutted the road and the protestants had actual notice of the hearing and were not prejudiced.

[7] *Commentary:* In *Hanover Healthcare Plus, Inc. v. Zoning Hearing Board of Penn Township,* 875 A.2d 1255, 1257 (Pa. Cmwlth. 2005), the "Court relied on [Section 609(e)] of the MPC, 53 P.S. § 10609(e), which provides that the municipality shall submit **each** amendment to its planning agency at least thirty days prior to the hearing on such proposed amendment," even though the amendment only contained minor revisions to the original submission.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Subsection (g) was 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 in other articles of the MPC.	**1988-170**
Section 609.1. Procedure for Landowner Curative Amendments.	
The title of this section was amended to clarify that the provisions in this section apply to curative amendments filed by landowners. The section is subdivided to facilitate reading.	**1988-170**
Subsection (a) was editorially amended.	**1988-170**
Subsection (b) was first amended by Act 170 of 1988 to add a provision that prohibits a court from ruling an entire zoning ordinance invalid if a landowner brings a successful curative amendment challenge; the court is empowered to invalidate only the provisions that relate to the curative amendment challenge.[8] The subsection subsequently was amended by Act 2 of 2002 to provide an exception to the requirement that landowner curative amendment hearings be conducted in accordance with Section 908 by stating that deemed approval provisions of Section 908(9) shall not apply and that the provisions of Section 916.1 shall control. About four months later, the subsection again was amended by Act 43 of 2002 to further provide and clarify exceptions to the requirement that landowner curative amendment hearings be conducted in accordance with Section 908; Act 43 states that Section 908(1.2) (pertaining to hearing procedures) and Section 908(9) (pertaining to decision, findings, and deemed approval) shall not apply and maintains that the provisions in Section 916.1 shall control.	**1988-170** **2002-2** **2002-43**
Subsection (c) was added to describe the means by which a municipality shall deal with a meritorious validity challenge to its zoning ordinance. Included within its provisions are five planning factors for consideration in municipal deliberations over a landowner's proposed curative amendment.[9]	**1988-170**
Section 609.2. Procedure for Municipal Curative Amendments.	
Several editorial changes were embodied within this section. The major alteration clarifies that the procedures are mandatory if a municipality determines that its zoning ordinance is substantively invalid.	**1988-170**

[8] *Commentary:* This section adopts the approach of the Commonwealth Court in *Appeal of Kasorex,* 70 Pa. Cmwlth. 193, 452 A.2d 921 (1982), which ruled that the unlawful exclusion of a class of housing did not nullify an entire zoning ordinance, thereby leaving a municipality wholly without zoning protection.

[9] *Commentary:* This subsection was amended on the floor of the House of Representatives on November 16, 1988. The language contained within clauses (1) through (5) is essentially a rewording of similar provisions found in Section 1011(2)(i)-(v) of the pre-Act 170 MPC. The text of these clauses was originally added to this "Judicial Relief" section by Act 249 of 1978. A review of the annotations at Title 53 P.S. Section 11006-A should reveal sufficient case law precedent to assist in the interpretation that has been given this planning criteria language since its inception over two decades ago. (Prior Section 1011 was reclassified as Section 1006-A.)

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 610. Publication, Advertisement and Availability of Ordinances.	
This section was amended to combine and replace former Section 610 and Section 611. This procedure for enacting zoning ordinances or amendments thereto is similar to those procedures required by the various municipal codes for enactment of ordinances.	**1988-170**
Section 611. Publication After Enactment.	
This section was repealed.	**1988-170**
Section 613. Registration of Nonconforming Uses, Structures, and Lots.	
This title was amended to include nonconforming structures and lots. Provisions in zoning ordinances for identification and registration of nonconforming uses, structures, and lots are no longer mandatory in this amended section. 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.	**1988-170**
Section 614. Appointment and Powers of Zoning Officer.	
This section was amended to clarify the prohibition against zoning officers holding any elective position in the municipality in order to reduce the possibilities of potential conflicts of interest. Provisions also were added to authorize initiation of civil enforcement proceedings by the zoning officer, in place of the traditional criminal summary proceedings, to assist in municipal enforcement of the zoning ordinance.[10] The Task Force recommended that all zoning officers receive adequate training in their role and responsibilities, as well as in the fundamentals of zoning. Therefore, 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.	**1988-170**
Section 615. Zoning Appeals.	
This section was not amended.	
Section 616. Enforcement Penalties.	
This section was repealed and replaced by Section 617.2, Enforcement Remedies.	**1988-170**
Section 616.1. Enforcement Notice.	
This section, added by Act 170 of 1988, sets forth the requirements for the contents and service of an enforcement notice for an alleged violation of the zoning ordinance.	**1988-170**

[10] *Commentary:* This explicit enforcement authorization is consistent with the Task Force recommendation to eliminate any reference to criminal enforcement of ordinances promulgated pursuant to the MPC. *See supra* Article V (Subdivision and Land Development), note 25, p. 50.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
The detailed contents of the notice serve to protect the landowner and also encourage enforcement. The enforcement notice must include: (1) the name of the owner of record and any other person against whom action is intended; (2) the location of the property in violation; (3) the specific violation, a description of the requirements which have not been met, and a 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.	
This section was amended by Act 165 of 1996 to provide that in appeals from an enforcement notice to the zoning hearing board, the municipality will have the responsibility of presenting its evidence first,[11] and any filing fee paid by a party to appeal an enforcement notice must be returned if the zoning hearing board or any court in a subsequent appeal rules in the appealing party's favor.	**1996-165**
Section 617. Causes of Action.	
This section was amended by retitling it and 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 that are violative of any ordinance promulgated pursuant to the MPC or prior enabling laws.[12] Action may be initiated 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 was deleted to avoid municipal involvement in actions with which the municipality may not agree.	**1988-170**
Section 617.1. Jurisdiction.	
This section simply states that district justices shall have initial jurisdiction for all proceedings brought under Section 617.2.	**1988-170**

[11] *Commentary:* In a case of first impression, the Commonwealth Court in *Hartner v. Zoning Hearing Board of Upper St. Clair Township,* 840 A.2d 1068 (Pa. Cmwlth. 2004), held that the township did not meet its burden of presenting its evidence first by only presenting the procedural history of the matter and citing the relevant zoning sections without presenting evidence that the Hartners violated the sections. The court determined that the appropriate remedy was to remand for a new hearing before the zoning hearing board.

[12] *Commentary:* It is important to note that the cause of action brought under this section, whether it is brought by the municipality or an affected private party, is only to "prevent, restrain, correct or abate" a prohibited use or structure. This cause of action does not authorize the civil penalties discussed in Section 617.2. Such actions may only be brought by the municipality. *See* Section 617.2(c).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 617.2. Enforcement Remedies.	
This section was added to contain amended provisions from the pre-Act 170 Section 616, which was repealed. It provides for "enforcement remedies" for violations of the zoning ordinance.[13]	
Subsection (a) reflects a major change by eliminating the criminal offense for zoning ordinance violations and substituting a civil judgment. This change is deemed to be more in keeping with the nature of zoning violations and the reality that criminal prosecutions for violations of municipal ordinances are far from commonplace. Liability for violation results in a civil judgment of no more than $500 plus costs and attorney fees incurred by the municipality, but no violation shall be deemed to have occurred nor any judgment commenced, imposed, or paid until a final determination is made. In case the defendant fails to pay or to appeal the judgment in a timely matter, the municipality may enforce the judgment pursuant to applicable rules of civil procedure. 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. All fines for violations are to be paid over to the municipality whose ordinance has been violated.	**1988-170**
Subsection (b) authorizes the court of common pleas to grant a stay suspending the per diem fine upon petition and cause shown pending final adjudication.	**1988-170**
Subsection (c) declares that the municipality has the exclusive right to commence an action for enforcement pursuant to this section.[14]	**1988-170**
Section 617.3. Finances and Expenditures.	
This section replaced pre-Act 170 Section 618 (Finance), which was repealed.	
Subsection (a) continues the authorization for the governing body to appropriate funds to finance the preparation of zoning ordinances but mandates that funds be appropriated for the administration, enforcement, costs, and expenses of appeals to court, including legal fees.	**1988-170**
Subsection (b) specifically requires the governing body to make a provision in its budget and appropriate funds for operation of the zoning hearing board.	**1988-170**
Subsection (c) expands the authorization in Section 907 (Expenditures for Services) to clearly provide that, as the need arises, the zoning hearing board may retain and	**1988-170**

[13] *See* explanatory commentary to Section 515.1 (Preventive Remedies).

[14] *Commentary: Frye Construction, Inc. v. City of Monongahela,* 526 Pa. 170, 584 A.2d 946 (1991), *reargument denied,* March 18, 1991, distinguishes enforcement proceedings that may be commenced only by a municipality from actions in equity that are also available to aggrieved landowners.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
fix the compensation of legal counsel, who shall not be the municipal solicitor.[15] The board may also employ or contract for and otherwise fix the compensation of experts and staff and procure other services as it deems necessary; however, the expenditures cannot exceed the amount appropriated by the governing body.	
Subsection (d) contains language from Section 618 of the pre-Act 170 MPC permitting the governing body to accept gifts, grants of money, and services from private sources and the county, state, and federal governments for purposes of zoning administration.	**1988-170**
Subsection (e) expanded 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 described in Section 908(7).[16]	**1988-170**
Section 618. Finances.	
This section was repealed and replaced by Section 617.3 (Finances and Expenditures).	**1988-170**
Section 619. Exemptions.	
Added at the request of the PUC, this section was amended to specify the responsibilities of the PUC in the event that a public utility corporation petitions the Commission to conduct public hearings relative to exemptions from zoning requirements for such corporations. The PUC would be required to give both the	**1988-170**

[15] *Commentary:* The opinion in *Sultanik v. Board of Supervisors of Worcester Township,* 88 Pa. Cmwlth. 214, 488 A.2d 1197 (1985), more clearly defined the prohibition against a zoning hearing board solicitor being the same individual as the municipal solicitor by ruling that these positions could not be maintained by two attorneys from the same law firm in order to avoid "even the appearance of bias"; these conflict of interest principles are also considered in *Horn v. Township of Hilltown,* 461 Pa. 745, 337 A.2d 858 (1975) and *Gardner v. Repasky,* 434 Pa. 126, 252 A.2d 704 (1969); similar constraints are also imposed in Section 916.1 (Validity of Ordinances; Substantive Questions). *See also Newtown Township Board of Supervisors v. Greater Media Radio Company,* 138 Pa. Cmwlth. 157, 587 A.2d 841 (1991).

[16] *Commentary:* The decisions in *Moyer's Landfill, Inc. v. Zoning Hearing Board of Lower Providence Township,* 69 Pa. Cmwlth. 47, 450 A.2d 273 (1982), *cert. denied sub nom. Providence Builders, Inc. v. Zoning Hearing Board of Lower Providence Township,* 471 U.S. 1101 (1985); *Golla v. Hopewell Township Board of Supervisors,* 69 Pa. Cmwlth. 377, 452 A.2d 273 (1982); and *Borough of Brookhaven v. BP Oil Company,* 48 Pa. Cmwlth. 128, 409 A.2d 494 (1979), all specifically outline various aspects of this subsection relating to the reasonableness of fees to be charged along with a delineation of exactly what fees may be imposed upon parties appearing before the board.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
municipality and the corporation appropriate legal and due process opportunities for a full hearing on all issues related to the requested exemption.[17]	
Section 619.1. Transferable Development Rights.	
This section was added to provide some general guidelines for the optional establishment of a TDR approach by municipalities as provided in Sections 603(c)(2.2), 605(4), 619.1, 702.1, 703-A, 909.1(a)(7), and 1105(b)(2).	
Subsection (a) permits TDRs provided that they are 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.	**1988-170**
Subsection (b) requires that TDRs be conveyed by deed and recorded in the office of the recorder of deeds.	**1988-170**
Subsection (c) specifies that the recorder of deeds may not record an instrument of conveyance unless it contains the approval of the municipal governing body, which approval is dated not more than 60 days prior to the date of recording.	**1988-170**
Subsection (d) specifies that TDRs are not transferable beyond the boundaries of the municipality that has authorized said transfer of development rights, except as provided by the amendment to this subsection by Act 131 of 1992, in which development rights may be transferable within and between the boundaries of two or more municipalities that have provided for TDRs in the context of a joint municipal zoning ordinance. Act 68 of 2000 further expanded this exception to authorize TDRs among municipalities that have a written agreement.	**1988-170** **1992-131** **2000-68**
Section 619.2. Effect of Comprehensive Plans and Zoning Ordinances.	
This section was added to provide for the effect of comprehensive plans and zoning ordinances on state permitting, funding, and other land use-related decisions and to authorize the sharing of tax revenues and fees among municipalities.	
Subsection (a) provides that Commonwealth agencies, in their review of municipal infrastructure or facilities funding or permitting applications, *shall consider and may rely upon* zoning ordinances that have been adopted as generally consistent with the respective comprehensive plans. This subsection was amended editorially by Act 127 of 2000.	**2000-68** **2000-127**
Subsection (b) requires the Center for Local Government Services to coordinate Commonwealth agency program resources with municipal planning and zoning	**2000-68**

[17] *Commentary: See Newtown Township v. Philadelphia Electric Company,* 140 Pa. Cmwlth. 635, 594 A.2d 834 (1991), *appeal denied,* 529 Pa. 627, 600 A.2d 542 (Nov. 18, 1991) (construing the Section 619 public utility exemption as extending to ordinances that require subdivision and land development approval).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
activities and, upon request, to assist municipalities in identifying and assessing the effect of Commonwealth agency decisions on municipal and multimunicipal planning and zoning.	
Subsection (c) provides that when municipalities adopt a joint municipal zoning ordinance, Commonwealth agencies *shall consider and may rely upon* the ordinance for funding or permitting of infrastructure or facilities, and municipalities may agree to share tax revenues and fees.	**2000-68**
Section 621. Prohibiting the Location of Methadone Treatment Facilities in Certain Locations.	
This section was added to prohibit the location of defined methadone treatment facilities within 500 feet of an existing school, public playground, public park, residential housing area, child-care facility, church, meetinghouse, or other actual place of regularly stated religious worship. Exceptions to the prohibition are also provided.	**1999-10**

Article VII – Planned Residential Development

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 701. Purposes.	
This section was amended to add references to nonresidential uses, consistent with the revised definition of PRD and, thus, provides for more varied uses in planned developments.	**1988-170**
Section 702. Grant of Power.	
This section was amended to specify that a PRD can be implemented only through provisions within a zoning ordinance. Separate PRD ordinances must have been eliminated within five years of the date of enactment of Act 170.[1] It was thought that, because the PRD ordinance was not widely used, it could create confusion in terms of its relationship to zoning.	**1988-170**
The introduction and clause (1) were 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 was added to authorize municipalities to utilize an option to transfer development rights in conjunction with provisions for PRDs. Municipalities may either limit the use of TDRs to PRDs or adopt a more comprehensive approach throughout the community in order to preserve farmlands and historic or natural resources, for example, pursuant to the provisions of Section 619.1.	**1988-170**
Section 703. Applicability of Comprehensive Plan and Statement of Community Development Objectives.	
This section and its title were 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.[2, 3] The term "provisions" is used instead of "ordinance," consistent with the amendments to this article.	**1988-170**

[1] *See* Section 713 (Compliance by Municipalities).

[2] *Commentary:* This section was amended to more clearly delineate legislative intention with respect to the relationship between PRD applications and the comprehensive plan. In *Michaels Development Company, Inc. v. Benzinger Township Board of Supervisors,* 50 Pa. Cmwlth. 281, 413 A.2d 743 (1980), Commonwealth Court ruled that "inconsistencies with the . . . comprehensive plan did not strike a fatal blow to the [PRD developer's] application." The language in this section, therefore, provides legislative authority for the Court's previous determination and the rationale employed in *Benzinger.* It also adds statutory authority for consideration of the statement of community development objectives as well as the statement of municipal legislative findings.

[3] *See* Section 606 (Statement of Community Development Objectives).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 704. Jurisdiction of County Planning Agencies.	
This section was subdivided to facilitate reading. The general term "municipality" is used consistent with other sections of the MPC.	**1988-170**
Subsection (a) was amended editorially.	**1988-170**
Subsection (b) was amended to eliminate the option for a municipality to designate the county planning agency as administrator of PRD provisions in order to be consistent with the amendment to Section 702.	**1988-170**
Section 705. Standards and Conditions for Planned Residential Development.	
This section was 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 were 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 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 individual lot owners within a PRD, this subsection (j) does not apply.	**1988-170**
Section 706. Enforcement and Modification of Provisions of the Plan.	
This section was amended editorially.	**1988-170**
Section 707. Application for Tentative Approval of Planned Residential Development.	
This section was amended to reflect the editorial changes in Section 702 concerning PRD provisions and the delegation of administrative powers only to the planning agency. In clause (4)(v) "water supply" was added to insure consideration of this important issue in PRD plan submissions.	**1988-170**
Section 708. Public Hearings.	
Subsections (a) and (b) were partially and entirely deleted, respectively, and reference is made to the hearing procedure in Article IX (Zoning Hearing Board and other Administrative Proceedings). Subsection (a) was also amended to limit delegation of PRD administrative powers to the planning agency only.	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Subsection (c) was added to make available for PRD dispute resolution the mediation option proposed in Article IX.	**1988-170**
Section 709. The Findings.	
This section initially was amended editorially by Act 170 of 1988 to facilitate reading. Subsequently, the section again was amended by Act 2 of 2002 to provide another time parameter for issuing findings to the landowner for tentative approval of a PRD application. The amendment required that, along with the governing body's or planning agency's previous 60-day time limit to issue findings following the conclusion of the public hearing, either entity shall issue findings within 180 days after the filing of the application, whichever occurs first.[4]	**1988-170** **2002-2**
Section 710. Status of Plan After Tentative Approval.	
This section was 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.	**1988-170**
Section 711. Application for Final Approval.	
Subsection (a) was not amended.	
Subsections (b) and (c) were amended editorially by Act 170 of 1988. Subsection (b) was amended further by Act 68 of 2000 to make modifications and additions regarding a 45-day time period for municipal action on final approval of a PRD application, with deemed approval language added for failure to render a timely decision.	**1988-170** **2000-68**
Subsection (d) was amended to cross-reference Article V (Subdivision and Land Development) 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 was also included in this subsection.	**1988-170**
Subsection (e) was amended to delete the reference to resubdivision, since a zoning map amendment would be a necessary prerequisite for resubdivision.	**1988-170**
Section 712.1. Jurisdiction.	
This section was added to simply state that district justices shall have initial jurisdiction for all proceedings brought under Section 712.2.	**1988-170**

[4] This amendment had no impact on this section since the prior time parameters, pursuant to Sections 708 and 709, totaled 180 days from the filing of the application to the issuance of findings.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 712.2. Enforcement Remedies.	
This section was added to provide for "enforcement remedies" for violations of PRD provisions.[5]	
Subsection (a) imposes a civil judgment for violation of PRD provisions. Liability for a violation shall result in a civil judgment of not more than $500 plus costs and attorney 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 case the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to applicable rules of civil procedure. 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.	**1988-170**
Subsection (b) authorizes the court of common pleas to grant a stay suspending 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.	**1988-170**
Subsection (c) declares that the municipality has the exclusive right to commence an action for enforcement pursuant to this section.	**1988-170**
Section 713. Compliance by Municipalities.	
This section provides that municipalities with pre-Act 170 PRD ordinances must comply with the new provisions of this article within a grace period ending on February 21, 1994, five years from the effective date of Act 170 of 1988.	**1988-170**

[5] *See* explanatory commentary to Section 515.1 (Preventive Remedies) and compare with commentary to Section 617.2 (Enforcement Remedies).

Article VII-A – Traditional Neighborhood Development[1]

Act 68 of 2000 is the corresponding act effecting the addition of Article VII-A to the MPC.

Manner in Which Articles and Sections are Impacted	Amendatory Acts*
Section 701-A: Purposes and Objectives.	
Subsection (a) grants powers to municipalities to further nine specific purposes.	**2000-68***
Subsection (b) provides eight objectives that may be achieved in TND.	
Section 702-A: Grant of Power.	
This section provides that the governing body of each municipality may enact, amend, and repeal provisions of a zoning ordinance in order to fix standards and conditions for TND. It requires that the zoning ordinance must include any standards and conditions for TND, and that the enactment of TND provisions must be in accordance with the required procedures for the enactment of an amendment to a zoning ordinance as provided in Article VI (Zoning).	
Clause (1) stipulates that TND provisions must set forth the standards, conditions, and regulations, including an overlay zone for new development, or an overlay zone or outright designation for existing development or infill.	
Clause (2) requires that TND provisions set forth the procedures pertaining to the application for, hearing on, and tentative and final approval of TND, which shall be consistent with this article for those applications and hearings.	
Section 703-A: Transferable Development Rights.	
This section states that municipalities which enact TND provisions may also incorporate provisions for TDRs, on a voluntary basis, in accordance with Article VI (Zoning).	
Section 704-A: Applicability of Comprehensive Plan and Statement of Community Development Objectives.	
This section requires that all provisions adopted pursuant to this article be based on and interpreted in relation to the statement of community development objectives of the zoning ordinance and be consistent with the comprehensive plan or the statement of community development objectives in accordance with Section 606.	

* Act 68 of 2000 effected the addition of Article VII-A in its entirety.

[1] The analysis of Article VII-A is adapted and reprinted, in part, with permission from the "Bill Summary" of Senate Bill 300, Printer's Number 2058 (Act 68 of 2000), prepared by Donald Grell, Executive Director of the House Local Government Committee (R).

Manner in Which Articles and Sections are Impacted	Amendatory Acts*

It further requires that every TND application be based on and interpreted in relation to the statement of community development objectives and be consistent with the comprehensive plan.

Section 705-A: Forms of Traditional Neighborhood Development.

This section provides that TND may be developed and applied in any of the following forms:

- As a new development.
- As an outgrowth of existing development.
- As a form of urban infill where existing uses and structures may be incorporated into the development.
- In any combination or variation of the above.

Section 706-A: Standards and Conditions for Traditional Neighborhood Development.

Subsection (a) requires that all provisions, adopted according to this article, establish the standards, conditions, and regulations by which proposed TND is evaluated and further requires that those standards, conditions, and regulations be consistent with the other provisions in this section.

Subsection (b) stipulates that provisions adopted pursuant to this article set forth the uses permitted in TND, which uses may include, but shall not be limited to:

- Dwelling units of any type or configuration, or any combination thereof.
- Those nonresidential uses deemed appropriate for incorporation into the design of the TND.

Subsection (c) permits that regulations set forth the timing of development among the different types of dwellings and among residential and nonresidential uses.

Subsection (d) requires that standards be established which govern the density or intensity of land use in a TND. The standards may vary from the density and intensity of the existing zoning provisions. Suggested criteria for such standards, which are not necessarily all inclusive, are described in nine categories.

Subsection (e) allows, in the case of TND proposed for development over a period of years, that standards may encourage the flexibility of housing density, design, and type, in conjunction with reservation of common open space, as intended by this article.

Subsection (f) specifies that provisions may stipulate a minimum number of dwelling units and a minimum number of nonresidential units in a TND.

* Act 68 of 2000 effected the addition of Article VII-A in its entirety.

Manner in Which Articles and Sections are Impacted	Amendatory Acts*

Subsection (g) vests in the governing body for the purposes of this article, the authority granted to a municipality by Article V (Subdivision and Land Development) for establishing enumerated subdivision and land development standards. TND subdivision and land development standards may vary from the standards pursuant to Article V, as long as TND provisions set forth the limits and extent of any modifications or changes, so that a landowner will know the limits and extent of permissible modifications.

Section 707-A: Sketch Plan Presentation.

This section authorizes the municipality to meet with a landowner to informally discuss the conceptual aspects of a TND plan, prior to the filing of an application. It further permits the landowner to present a sketch plan for discussion purposes only and allows the municipality to make nonbinding suggestions and recommendations on the design of the development plan.

Section 708-A: Manual of Written and Graphic Design Guidelines.

This section authorizes the governing body of a municipality, which has adopted TND provisions, to also adopt by ordinance, upon review and recommendation of the planning commission, if one exists, a manual of design guidelines to assist applicants in preparing proposals for TND.

Section 709-A: Applicability of Article to Agriculture.

This section, which has language identical to that in Section 603(h), requires zoning ordinances to encourage the development and continuing viability of agricultural operations, and prohibits zoning ordinances that restrict existing agricultural operations from expanding or changing their operations unless the agricultural operation will have a direct adverse effect on public health and safety.

* Act 68 of 2000 effected the addition of Article VII-A in its entirety.

Article VIII – Zoning Challenges; General Provisions

This article was repealed in 1972 (June 1, 1972, P.L. 333, No. 93).

Article VIII-A – Joint Municipal Zoning

Article XI-A of the pre-Act 170 MPC, which contained this subject matter as a result of Act 249 of 1978, P.L. 1067, was repealed in its entirety and replaced by Article VIII-A (Joint Municipal Zoning), which uses the format of Article VI (Zoning).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 801-A. General Powers.	
Subsection (a) contains language similar to the authorization in pre-Act 170 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, as well as to enable the implementation of joint municipal comprehensive plans.	**1988-170**
Subsection (b) was added to clarify that the joint municipal zoning ordinance must be based on an adopted joint municipal comprehensive plan.	**1988-170**
Section 802-A. Relation to County and Municipal Zoning.	
This section was derived from pre-Act 170 Section 1105-A(b) 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 that has adopted a joint municipal zoning ordinance as of the effective date of the joint municipal zoning ordinance.	**1988-170**
Section 803-A. Ordinance Provisions.	
This section cross-references Section 603 (Ordinance Provisions) for the provisions that may be embodied in zoning ordinances.	**1988-170**
Section 804-A. Zoning Purposes.	
This section requires that joint municipal zoning ordinances serve the same purposes required by Section 604 (Zoning Purposes) for municipal zoning.	**1988-170**
Section 805-A. Classifications.	
This section requires that authorizations and requirements set forth in Section 605 (Classifications), relating to zoning generally, be applicable to joint municipal zoning. It also specifically mandates that no area of any participating municipality be left unzoned.	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 806-A. Statement of Community Development Objectives.	
Subsection (a) requires a statement of community development objectives for joint municipal zoning ordinances as defined in Section 606.	**1988-170**
Subsection (b) requires that the statement of community development objectives for a joint municipal zoning ordinance be based upon the joint municipal comprehensive plan and may be supplemented by a statement of legislative findings of the participating governing bodies. 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 areawide cooperative zoning efforts. Input for local community development objectives is protected by the provisions of subsection (c), below.	**1988-170**
Subsection (c) 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.	**1988-170**
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 following exceptions: (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.	**1988-170**
Section 808-A. Enactment of Zoning Ordinance.	
Subsection (a) cross-references Section 608 to set forth the procedures to enact a joint municipal zoning ordinance.	**1988-170**
Subsection (b) requires that the joint municipal zoning ordinance shall not become effective until enacted by all participating municipalities.	**1988-170**
Subsection (c) sets forth the prerequisites for withdrawal from and repeal of joint municipal zoning.	**1988-170**
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.[1]	

[1] *Commentary:* The provisions for "binding" regional zoning of a minimum period of three years reflect some judicial concerns expressed as dicta in *Nicholas, Heim, and Kissinger v. Township of Harris,* 31 Pa. Cmwlth. 357, 375 A.2d 1383 (1977). In that case, although the township was a member of a regional planning commission, no regional zoning ordinance existed, and the Court suggested "that it might be a very good thing for the General Assembly to empower municipalities to enter into binding regional zoning arrangements" in order to provide for a regional "fair share" of various housing needs over the acreage of several adjacent municipalities. Section 811-A also relates to the dicta in the *Harris* case since it authorizes courts to review such regional zoning, not within individual member municipalities, but rather over the entire broader geographic boundaries of the region thus zoned.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
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's advanced notice of its desire to withdraw to all municipalities participating in the 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) 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.	**1988-170**
Subsection (b) 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.	**1988-170**
Subsection (c) requires approval by all participating municipalities to adopt an amendment.	**1988-170**
Section 810-A. Procedure for Curative Amendments.	
This section cross-references Section 609.1 concerning procedure for landowner 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	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
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.[2]	**1988-170**
Section 812-A. Procedure for Joint Municipal Curative Amendments.	
Subsection (a) cross-references Section 609.2 for procedures for joint municipal curative amendments.	**1988-170**
Subsection (b) provides that the restriction in Section 609.2(4), which specifies 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.	**1988-170**
Subsection (c) was added to:	**1998-97**
Clause (1) – extend the time frame for the adoption of a curative amendment by two or three municipalities that have adopted a joint zoning ordinance to nine months.	
Clause (2) – establish that, if more than three municipalities are involved, the time period for enactment of the amendment will extend one additional month for each municipality in excess of three that is a party to the ordinance.	
Clause (3) – provide that, in any case, the amendment must be enacted no later than one year from the date of declaration of partial or total invalidity.	
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.	**1988-170**
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.	**1988-170**
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.	

[2] *Commentary: Hudachek v. Zoning Hearing Board of Newtown Borough,* 147 Pa. Cmwlth. 566, 608 A.2d 652 (1992), upheld the exclusion of all home occupations in one of several municipalities that had adopted a joint municipal zoning ordinance. *See also* commentary for Section 808-A concerning *Harris,* note 1, p. 89.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Subsection (a) 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 (Zoning Hearing Board and other Administrative Proceedings).	**1988-170**
Subsection (b) 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.	**1988-170**
Section 816-A. Zoning Appeals.	
This section cross-references the appeal provisions of Articles IX (Zoning Hearing Board and other Administrative Proceedings) and X-A (Appeals to Court) for all rights and procedures relating to zoning appeals.	**1988-170**
Section 817-A. Enforcement Penalties.	
This section cross-references Section 617.1[3] for provisions relating to penalties for violation of the zoning ordinance.	**1988-170**
Section 818-A. Enforcement Remedies.	
Subsection (a) cross-references Section 6l7[4] for remedies available to correct violations of the zoning ordinance.	**1988-170**
Subsection (b) emphasizes 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.	**1988-170**

[3] This cross-reference should be cited as Section 617.2, pertaining to "Enforcement Remedies." Section 617.1 pertains to "Jurisdiction."

[4] This cross-reference should be cited as Section 617.2, pertaining to "Enforcement Remedies," as well as Section 617, pertaining to "Causes of Action."

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 819-A. Finances.	
Subsection (a) cross-references Section 617.2[5] for provisions relating to funding the administration of the joint municipal zoning ordinance.	**1988-170**
Subsection (b) 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.	**1988-170**
Section 820-A. Exemptions.	
This section cross-references Section 619 for exemptions to the joint municipal zoning ordinance.	**1988-170**
Section 821-A. Existing Bodies.	
This section provides that municipalities that have created "joint bodies" pursuant to the former Article XI-A have five years from the effective date of Act 170 of 1988 to comply with the provisions of the new Article VIII-A (Joint Municipal Zoning).	**1988-170**

[5] This cross-reference also should be cited as Section 617.3, pertaining to "Finances and Expenditures." Section 617.2 pertains to "Enforcement Remedies."

Article IX – Zoning Hearing Board and other Administrative Proceedings

This article was revised and amended to set forth, in a clear and concise manner, the jurisdiction and the administrative procedures to be employed by the respective quasi-judicial local agencies charged with administration of the MPC. Since the Task Force discovered that jurisdictional provisions were interspersed throughout the MPC, it decided and expressly 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 was changed by adding "and other Administrative Proceedings" to reflect its expanded scope and applicability.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 901. General Provisions.	
This section was amended to reflect its more general scope and to indicate that whenever the term "board" is used in Article IX, it shall mean "zoning hearing board," unless otherwise noted by context.	**1988-170**
Section 902. Existing Boards of Adjustment.	
This section was repealed. It was originally enacted as a transitional provision and is no longer necessary.	**1988-170**
Section 903. Membership of Board.	
This section was amended to provide a zoning hearing board with a more stable, continuous membership. It was intended that through these provisions the public policy and interests served by the board would be more continually preserved and more carefully reviewed.	
Subsection (a) was amended to change the term of office and appointment sequence for a five-member zoning hearing board to reflect a five-year minimum term. Additionally, the option of allowing a planning commission member to be a member of the zoning hearing board was eliminated to avoid any potential conflicts of interest.	**1988-170**
Subsection (b) was replaced, in total, to provide for the appointment of alternate board members and defines their rights and duties. These provisions were intended to insure that a zoning hearing board will continue to function should one or more members resign, be unable to attend a meeting, or abstain or disqualify themselves. The repealed language of subsection (b) provided that a five-member board could be reduced to three members only upon approval of electors via referendum.	**1988-170**
Both subsection (a) and subsection (b) were amended by Act 99 of 2004 to expressly state that *members* and *alternate members* of the zoning hearing board shall not hold any	**2004-99**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
other "elected or appointed" office in the municipality and shall not be employees of the municipality.	
Section 904. Joint Zoning Hearing Board.	
This section was divided into subsections to facilitate reading. Subsection (a) authorizes the creation of joint boards. Subsection (b) establishes the terms of office of joint board members and specifically eliminates membership by a person who serves on a municipality's planning commission. Subsection (c) was 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 MPC unless inconsistent with this section.	**1988-170**
Section 905. Removal of Members.	
This section was editorially amended.	**1988-170**
Section 906. Organization of Board.	
Section 906 was divided into three subsections for purposes of an amendment.	**1988-170**
Subsection (a), which includes pre-Act 170 Section 906, in part, was not amended.	
Subsection (b) was added by Act 170 of 1988 to provide for the designation of alternate members to serve as voting members of a board. Subsequently, it was amended by Act 99 of 2004 to provide that the chairman of the zoning hearing board "may designate alternate members of the board to replace *any* absent or disqualified members . . . ." (Emphasis added.) Previously, the chairman could only designate alternate members of the board to replace absent or disqualified members as needed to reach a quorum. Minor technical corrections to this subsection were also made.	**1988-170** **2004-99**
Subsection (c) includes amendatory language that provides: (1) for local discretion and flexibility by clarifying that a board's records are the property of the municipality, in order to eliminate any ambiguity that may have existed; and (2) for the board's activity report to be submitted as requested by the governing body, rather than yearly.	**1988-170**
Section 907. Expenditures for Services.	
This section was amended to authorize compensation for alternate members, as determined by the governing body, and establishes limitations upon the rate thus authorized.	**1988-170**
Section 908. Hearings.	
This section establishes procedural requirements for the conduct of a hearing by a zoning hearing board.	
Clause (1) was revised to clarify how and to whom written notice must be given prior to a hearing. Public notice, as defined in Section 107(a), is required.	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Clause (1.1), which was added, permits 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 expenses. No fees are chargeable for various professional and expert services. It was intended that this provision alleviate the burden of unreasonable fee schedules while providing adequate and equitable cost reimbursement to a municipality.	**1988-170**
Clause (1.2), which was added by Act 170 of 1988, required that the board commence hearings on the applicant's appeal no later than 60 days from the applicant's request, unless the applicant agrees to an extension in writing. This clause was amended substantially by Act 2 of 2002 and Act 43 of 2002 to result in the following provisions, which, as the consequence of a separate Act 43 amendment, pertain to the conduct of hearings on conditional use requests before the governing body (Section 913.2), as well as proceedings before the zoning hearing board. The purpose of these amendments is to better define the procedure to conduct hearings and to provide new equitable language concerning the period for completion of the applicant's case-in-chief and the time frame provided to opposing parties. ◈ The *first* hearing *before the board or hearing officer* shall be *commenced* within 60 days from the date of *receipt of* the applicant's *application,* unless the applicant has agreed in writing to an extension of time. (Emphasis added to new language.) ◈ After the first hearing, *"[e]ach subsequent hearing before the board or hearing officer shall be held within 45 days of the prior hearing unless otherwise agreed to by the applicant in writing or on the record."* (Emphasis added to new language.) ◈ An applicant: ◆ Shall complete the presentation of his case-in-chief, i.e., the part of a hearing in which the applicant presents evidence to support his claim or defense, within 100 days of the first hearing and, upon his request, shall be entitled to at least seven hours of hearings within the 100 days. ◆ May, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings. ◈ Persons opposed to the application: ◆ Shall complete the presentation of their opposition to the application within 100 days of their first hearing after the completion of the applicant's case-in-chief. ◆ May, upon the written consent or consent on the record by the applicant and municipality, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.	**1988-170** **2002-2** **2002-43**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Clause (2) initially was amended by Act 170 of 1988 to provide that an appellant, applicant, or municipality participating in a zoning hearing, conducted by an appointed hearing officer, may accept the decision of the hearing officer as final. This clause again was amended by Act 2 of 2002 to give the governing body or zoning hearing board, as the case may be, the option to appoint an independent attorney as a hearing officer.	**1988-170** **2002-2**
Clauses (3), (4), (5), and (6) were not amended.	
Clause (7) was amended to clarify issues relevant to a stenographer's fee. The appearance fee shall be paid equally by the applicant and the board. Transcription costs are to be 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 was intended to avoid the imposition of disproportionate transcription costs upon either the applicant or the municipality.[1]	**1988-170**
Clause (8) was amended to clarify that advice from the solicitor is not included among communications which the zoning hearing board or hearing officer is prohibited from reviewing without approval of affected parties.	**1988-170**
Clause (9) was amended by Act 170 of 1988, as follows, primarily to clarify and tighten time limitations upon the delivery of the hearing officer's report and the board's decision in order to avoid unnecessary or inequitable delays: ◈ Clarification of the individual delegated responsibility for notification to the public of a favorable decision because of failure of the board to act within the time limitations was enacted in order to insure that such notice is given. ◈ The time allowed the zoning hearing board to render a decision on a hearing officer's report was reduced from 45 to 30 days, although an applicant may agree to an extension of time either on the record or in writing. ◈ The timing of the notice and appeals from deemed decisions are also clarified.	**1988-170**
This clause was amended further by Act 2 of 2002 and Act 43 of 2002 to: (1) add criteria to the deemed approval provision for a proceeding before the zoning hearing board by specifying that failure "to *commence, conduct or complete* the required hearing *as provided in [section 908(1.2)]* . . ." is cause for a deemed approval; and (2) specify an exception to the deemed approval provisions, whereby substantive challenges to the validity of a zoning ordinance are subject to the deemed denial provisions under Section 916.1. (Emphasis added to new language.)	**2002-2** **2002-43**
Clause (10) was not amended.	

[1] *Commentary:* This amendment changed the law with respect to financial responsibility for stenographic fees in zoning hearing board proceedings, so that a municipality does not bear the full cost of the original transcript, with the applicant only charged for the reasonable cost of a copy thereof as formerly held by Commonwealth Court. *See Appeal of Mark-Garner Associates, Inc.,* 50 Pa. Cmwlth. 354, 413 A.2d 1142 (1980); *In re Appeal of Martin,* 33 Pa. Cmwlth. 303, 381 A.2d 1321 (1978).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 908.1. Mediation Option.	
This section introduced a mediation option as a supplement to proceedings initiated under this Article IX and Article X-A (Appeals to Court). It is not mandatory, since the municipality may choose to offer mediation, and any party may refuse to participate in mediation. Mediation is not a substitute for the proceedings that are required by Articles IX and X-A. The 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 MPC. The MPC specifically prohibits the zoning hearing board from initiating or participating as a mediating party.	**1988-170**
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. It was anticipated that the benefits of offering mediation as an official option under the MPC would include: (1) providing relief to an overburdened court system and support for a public policy in Pennsylvania that encourages 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. This section is referenced in Sections 508(7), 609(f), and 708(c).	
Section 909. Board's Functions: Appeals from the Zoning Officer.	
This section was repealed and its provisions were included in Section 909.1(a)(3) and Section 910.1.	**1988-170**
Section 909.1. Jurisdiction.	
This section sets forth the respective jurisdictions of the zoning hearing board and the governing body. It is intended to specifically delineate various matters that shall be heard exclusively by each respective local body or administrative agency.	
Subsection (a) defines the jurisdiction of the zoning hearing board. The following matters are intended to be heard solely and exclusively by the zoning hearing board:	**1988-170**
Clause (1) – Substantive challenges to the validity of any land use ordinance except curative amendments brought under Section 609.1. This provision was derived from Sections 910 and 1004 of the pre-Act 170 version of MPC, both of which are repealed.	

Manner in Which Articles and Sections are Impacted	Amendatory Acts

Clause (2) – Procedural challenges to the validity of any land use ordinance, including challenges raising questions of defective enactment.[2] This provision was derived from repealed Section 1003, and it removes such challenges from initial judicial review and places such review before the zoning hearing board; however, a procedural appeal from an initial enactment of a zoning ordinance, where a zoning hearing board has not been previously established, continues to lie directly to court.[3]

Clause (3) – Appeals from any determination of a zoning officer. This paragraph was derived from Section 909 of the pre-Act 170 MPC and makes all determinations of a zoning officer appealable only to the zoning hearing board.

Clause (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 MPC the local administrative agency to which such determinations are appealable.

[2] *Commentary:* A number of court cases had successfully challenged the validity of municipal ordinances because, in each case, the municipality did not strictly adhere to the procedural requirements for the adoption of the ordinance; *see, e.g., Cranberry Park Associates v. Cranberry Township Zoning Hearing Board,* 561 Pa. 456, 751 A.2d 165 (2000); *Valianatos v. Zoning Hearing Board of Richmond Township,* 766 A.2d 903 (Pa. Cmwlth. 2001); *Muhlenberg College v. Zoning Hearing Board of the City of Allentown,* 760 A.2d 443 (Pa. Cmwlth. 2000). The law appeared to give a party only 30 days from the effective date of an ordinance in which to challenge the ordinance's validity based on a defective process of adoption. Nevertheless, these cases held that a party could bring a procedural challenge *at any time* because the zoning ordinance was void *ab initio*, i.e., from the beginning. The court reasoned that the ordinance never had an effective date from which the 30-day period could begin since, because of the procedural defect, the ordinance was never legally adopted.

Act 215 of 2002, which amended Title 42 of Pa.C.S. (Judiciary and Judicial Procedure) Section 5571(c) by adding clause (5), addresses the effective date issue by defining the "intended effective date" for an ordinance, resolution, map or similar action, and clarifying that a challenge or appeal, based on an alleged defect in the enactment or adoption process, must be raised within 30 days after the "intended effective date." The Commonwealth Court stated in *Glen-Gery Corporation v. Zoning Hearing Board of Dover Township,* 856 A.2d 884 (Pa. Cmwlth. 2004), that based on rules of statutory construction, the General Assembly intended the amended Section 5571(c)(5) of the Judicial Code to apply to land use ordinances adopted, or intended to be adopted, pursuant to the MPC. The court noted that the amended Section 5571(c)(5) was adopted later in time than Section 909.1(a)(2) of the MPC and further noted that Section 5571(c)(5) stated that "*notwithstanding* section 909.1(a)(2) . . . of the [MPC], questions relating to an alleged defect in the process of enactment or adoption of any ordinance, resolution , map or similar action . . . shall be raised by appeal or challenge commenced within 30 days after the intended effective date of the ordinance, resolution, map or similar action." (Emphasis added.) *See also, Rural Route Neighbors v. East Buffalo Township Zoning Hearing Board,* 870 A.2d 388 (Pa. Cmwlth. 2005) (citing *Glen-Gery v. Zoning Hearing Board of Dover Township* for the proposition that the amended Section 5571(c)(5) applies to land use appeals before zoning hearing boards).

On August 10, 2005, however, the Pennsylvania Supreme Court granted Glen-Gery Corporation's Petition for Allowance of Appeal on "[w]hether 42 Pa.C.S. § 5571(c)(5), which requires challenges to the validity of an ordinance alleging a defect in its enactment or adoption be brought within 30 days after the intended effective date of the ordinance, violates due process." *Glen-Gery Corporation v. Zoning Hearing Board of Dover Township,* 882 A.2d 461 (Pa. 2005). No decision had been rendered as of the date of this publication.

[3] *Commentary:* 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 provided in Section 1001-A (Land Use Appeals).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Clause (5) – Applications for a variance from a zoning, flood plain, or flood hazard ordinance. This section was derived from Section 912 of the pre-Act 170 MPC. Section 910.2 is cross-referenced for the prerequisites and procedures for granting a variance.	
Clause (6) – Applications for special exceptions pursuant to a zoning, flood plain, or flood hazard ordinance. This provision was derived from Section 913 of the pre-Act 170 MPC and cross-references Section 912.1 for the conduct of the proceedings.	
Clause (7) – Appeals from the administrative determination of transfer of development rights. This provision confers jurisdiction upon the zoning hearing board for this unique land use planning concept.	
Clause (8) – Appeals from a zoning officer's preliminary opinion about compliance with applicable ordinance and map requirements. This provision was derived from Section 1005 of the pre-Act 170 MPC, which vested jurisdiction of these matters in the zoning hearing board. Also note that Section 916.2 is cross-referenced.	
Clause (9) – Appeals of determinations concerning sedimentation and erosion control and stormwater management. This clause is not derived from any specific section of the pre-Act 170 MPC, 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 stormwater management under Article V (Subdivision and Land Development) or Article VII (Planned Residential Development). 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 subsection vests exclusive administrative jurisdiction in the governing body, or the designated planning agency, with respect to the following matters:	**1988-170**
Clause (1) – Applications for approval of PRDs. This provision was derived from, clarifies, and supplements Section 702, relating to the authority to enact PRD provisions in zoning ordinances. Its purpose is to give exclusive jurisdiction to the governing body, or designated planning agency, to review and act upon all applications for PRDs. Since the governing body or designated planning agency has exclusive jurisdiction over these matters, provisions in the law that permit the governing body to designate a committee, commission, or administrative officer to perform this function were deleted as inconsistent.[4] This clause also cross-references provisions of Section 702.	

[4] *Commentary:* The intent of this provision is to ensure that only the duly elected officials of the municipality or qualified planning agencies examine the impact of a PRD upon community needs and standards. This provision also is consistent with other provisions of the MPC that authorize only the governing body or designated planning agency to review subdivision and land development applications, since PRDs are nothing more than sophisticated subdivision and land development plans integrated with other aspects of broad-based community planning and zoning. *See* Sections 508 (Approval of Plats) and 909.1(b)(2).

Manner in Which Articles and Sections are Impacted	Amendatory Acts

Clause (2) – Applications for subdivision and land development. This provision reaffirms and supplements the jurisdictional requirements of Sections 501 (Grant of Power) and 508 (Approval of Plats) of the MPC and cross-references Section 508 for the procedural mandate. Its purpose is to give the governing body exclusive jurisdiction over all applications for approval of subdivisions or land developments unless the subdivision and land development ordinance requires submission to a designated planning agency, in which case the exclusivity of jurisdiction shall rest with the planning agency.

Clause (3) – Applications for conditional uses. This provision reaffirms the exclusive jurisdiction of the governing body over conditional use applications as found in Section 603(b)(2) of the pre-Act 170 MPC and in Section 603(c)(2) of this statute; thus, this provision made no substantive changes. Section 603(c)(2) is cross-referenced for procedural requirements.

Clause (4) – Applications for a curative amendment to a zoning ordinance. This provision reaffirms the exclusive jurisdiction of the governing body to hear curative amendments as was provided in Section 1004 of the pre-Act 170 law and currently is found in Section 916.1.[5] Sections 609.1 and 916.1(a)(2) are cross-referenced for procedural requirements.

Clause (5) – Petitions for amendments to land use ordinances. This provision is derived from Sections 601 and 609 of the pre-Act 170 MPC 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 (Enactment of Zoning Ordinance Amendments) is cross-referenced for procedural requirements.

Clause (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 stormwater management. This provision was intended to clarify the exclusive jurisdiction of the governing body, or its designated planning agency, to review such matters and is consistent with other provisions of the MPC, which confer original or appellate jurisdiction upon the governing body or its designated planning agency in matters that are governed by the subdivision and land

[5] *Commentary:* It was the Legislature's intent that the MPC clearly state that all curative amendments be heard 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; therefore, 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 may be made to the zoning hearing board. 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.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
development ordinance and PRD provisions; see Section 508, Section 702, Section 909.1(b)(1), and Section 909.1(b)(2). If the determination of the zoning officer or the municipal engineer is not made during the course of a pending application for subdivision and land development or for a PRD, then the appeal shall be to the zoning hearing board as required by Section 909.1(a)(9). Clause (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 was exercised by the governing body and 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.[6]	
Section 910. Board Functions: Challenge to the Validity of Any Ordinance or Map.	
This section was repealed, and its provisions are now contained in Section 909.1(a)(1).	**1988-170**
Section 910.1. Applicability of Judicial Remedies.	
This section was derived from and is identical to part of repealed Section 909. Its purpose is to ensure that an action in mandamus is always an available remedy, when appropriate.	**1988-170**
Section 910.2. Zoning Hearing Board's Functions; Variances.	
This section is identical to Section 912 of the pre-Act 170 MPC. It delineates the zoning hearing board's standards 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).	**1988-170**
Section 912. Board's Functions: Variances.	
This section of the pre-Act 170 MPC was repealed. Its provisions were reenacted and renumbered as Section 910.2, and the jurisdiction of the zoning hearing board to decide variances was reaffirmed in Section 909.1(a)(5).	**1988-170**
Section 912.1. Zoning Hearing Board's Functions; Special Exception.	
This section was derived from and is identical to Section 913 of the prior MPC. 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).	**1988-170**
Section 913. Board's Functions: Special Exception.	
This section of the pre-Act 170 MPC was repealed, and its provisions were reenacted and renumbered as Section 912.1.	**1988-170**

[6] *Compare* Section 405, indicating that an appeal from the governing body lies with the zoning hearing board.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 913.1. Unified Appeals.	
This section was repealed. Provisions of this section would have been inconsistent with the exclusive jurisdiction provisions of Section 909.1.	**1988-170**
Section 913.2. Governing Body's Functions; Conditional Uses.	
This section was added by Act 170 of 1988 to ensure that the governing body conducts a hearing and applies the required standards and criteria when deciding applications for conditional uses.[7] Initially, it provided the governing body's function for conditional uses in precisely the same manner as the zoning hearing board's function for special exceptions in Section 912.1. Subsequently, the section was modified substantially by Act 165 of 1996, Act 2 of 2002 and, to a lesser extent, Act 43 of 2002 by amending the original language as subsection (a) and adding subsection (b) with three clauses.	**1988-170**
Subsection (a) was amended by Act 2 to: (1) require that the governing body conduct the hearing or appoint any member of the governing body or an independent attorney as a hearing officer for the hearing on a conditional use request; and (2) further provide that the applicant or the appellant, in addition to the municipality, may, prior to the decision or findings of the hearing, waive the decision or findings of the governing body and accept the decision or findings of the hearing officer as final.	**2002-2**
Subsection (b).	
Clause (1) was added by Act 165 to further provide for written decisions or written findings by a governing body within 45 days of the last hearing on a conditional use application.	**1996-165**
Clause (2) also was added by Act 165 to stipulate deemed approval provisions. However, it was amended by Act 2 and Act 43[8] to have the following combined effect of adding criteria, which specify that failure "to *commence, conduct or complete* the required hearing *as provided in section 908(1.2)*" is cause for a deemed approval. (Emphasis added to new language.) The previous Act 165 provision stated that failure "to hold the required hearing within 60 days from the date of the applicant's request for a hearing" is cause for a deemed approval. This change made the deemed approval provisions for a conditional use application consistent with those for a zoning hearing board proceeding.[9]	**1996-165** **2002-2** **2002-43**

[7] *Commentary:* Section 603(c)(2) authorizes the inclusion of provisions for conditional uses in zoning ordinances, and Section 909.1(b)(3) confers exclusive jurisdiction upon the governing body to decide applications for conditional uses.

[8] *Note:* A 27-day period existed, from April 12, 2002, the effective date of Act 2, to May 9, 2002, the effective date of Act 43, where the amendatory Section 913.2(b)(2) language, pursuant to Act 2, was in effect. Act 2 stated that failure "*to commence* the required hearing within 60 days from the date of the applicant's request for a hearing *or [failure] to complete the hearing no later than 100 days after the completion of the applicant's case in chief, unless extended for good cause upon application to the court of common pleas*," is cause for a deemed approval. (Emphasis added to new Act 2 language.)

[9] *See* Section 908(9).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Clause (3), added by Act 165, provides for the right of any party opposing the conditional use application "to appeal the decision to a court of competent jurisdiction," and for the conditional use decision or findings to be mailed or delivered to the applicant on the day following its date.	**1996-165**
Section 913.3. Parties Appellant Before the Board.	
This section reenacted the provisions of Section 914 of the pre-Act 170 MPC and conformed them to the revised MPC. No substantive changes were made. The provisions of this section specifically delineate 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.	**1988-170**
Section 914. Parties Appellant Before the Board.	
This section was repealed. Its provisions were moved to Section 913.3.	**1988-170**
Section 914.1. Time Limitations.	
This section governs appeals to the zoning hearing board or the governing body from municipal "determinations" as defined in Section 107(b). "Decisions" of the board or the governing body are appealed to the court of common pleas pursuant to Section 1002-A. Appeals from the governing body to the zoning hearing board were eliminated.	
Subsection (a) was a reenactment and renumbering of Section 915 of the pre-Act 170 law. It is intended to give to a person aggrieved by any determination by a municipal official or a municipality, pursuant to a land use ordinance, 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; however, this is so 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 the aggrieved person fails to demonstrate lack of notice, knowledge, or reason to believe that such action was taken, that party 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. 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 granting a permit to a landowner under a land use ordinance. This right of appeal applies whether the determination is final or tentative.	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Subsection (b). This subsection requires that all "determinations" adverse to a landowner be appealed within 30 days of actual or deemed notice of the determination. This subsection 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 was derived from Section 1006(2) of the pre-Act 170 MPC.[10]	**1988-170**
Section 915. Time Limitations: Persons Aggrieved.	
This section was repealed since it was renumbered as Section 914.1(a).	**1988-170**
Section 915.1. Stay of Proceedings.	
Subsections (a), (b), and (c) were derived from, but are not identical to, Section 916 of the pre-Act 170 MPC. They differ from former Section 916 in that subsection (b) places the burden of proof on the issue of frivolity on the applicant for a bond, and subsection (c) expressly states that an order denying or requiring a bond is not immediately appealable as a matter of right because it is not a final order. Subsection (d) was added to deter frivolous appeals to the appellate courts from zoning cases dismissed by a court of common pleas for refusal to post a bond by imposing reasonable costs, expenses, and attorney 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 was appealed merely to delay and ultimately discourage development by the passage of time.[11]	**1988-170**
Section 916. Stay of Proceedings.	
This section was repealed and its provisions were incorporated in Section 915.1.	**1988-170**

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

[11] *Commentary:* Subsection (d), which is intended to further deter frivolous appeals, may be related to the Superior Court decision in *Appeal of Affected and Aggrieved Residents from Adverse Action of Supervisors of Whitpain Township,* 325 Pa. Super. 8, 472 A.2d 619 (1984). Its language offers the opportunity to impose reasonable costs, expenses, and attorney fees upon parties who are engaged in a zoning appeal challenging a landowner's requested relief and who refuse to post bond. In the *Whitpain* case, a landowner who sought rezoning from residential to industrial use was continuously challenged by residents of that area of Montgomery County. The residents had failed to post bond, and the landowner sought some remuneration for extensive legal fees incurred in the ongoing dispute with the aggrieved residents.

The Superior Court of Pennsylvania entertained the landowner's appeal, even though the lower court lacked jurisdiction on the issue, due to "interests of judicial economy," and because of "the unique circumstances of this case." The Court ruled against the landowner, finding that "frivolous" appeals for purposes of bond requirements under the MPC did not necessarily entail "arbitrary, vexatious or bad faith" actions of aggrieved residents in ongoing challenges to the property owner's rezoning. Since pre-Act 170 law did not provide this remedy for an allegedly "harassed" landowner, this subsection would appear to offer a court the opportunity to address a landowner's concerns in this type of situation, which could not have been adjudicated in that manner in the *Whitpain* case.

Similar language was also incorporated into Article X-A (Appeals to Court), Section 1003-A.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 916.1. Validity of Ordinance; Substantive Questions.	
This section was derived from Sections 1004 and 1005 of the pre-Act 170 law. Its provisions deal 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 was intended to streamline the procedures set forth in former Sections 1004 and 1005 and to place them in Article IX since they concern proceedings before quasi-judicial bodies.	
Subsection (a) sets forth the statutory authority for a landowner's substantive challenge to the validity of any land use ordinance or map. It was derived from Section 1004 of the pre-Act 170 MPC. 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); however, 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).[12]	**1988-170**
Subsection (b) was derived from former Section 1005 of the MPC. It requires that any person aggrieved by another's use or development of land 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.	**1988-170**
Subsection (c) 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 was derived from former Sections 1004(2) and 1005 of the MPC.	**1988-170**
Clause (1) specifies the respective documentation that must accompany a request for a substantive challenge before the zoning hearing board or a request for a substantive challenge with a curative amendment before the governing body.	
Clause (2) specifically requires that any challenge which involves a curative amendment must also include a proposed amendment to the allegedly defective ordinance.	

[12] *Commentary:* 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 he cannot elect to submit both. He 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, 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.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
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 quasi-judicial capacity by the municipal solicitor, and that an independent attorney be retained to present the governing body's defense to the challenge.[13]	
Clause (5) provides for appropriate action by either the zoning hearing board or the governing body to cure alleged defects in the zoning ordinance. It also lists five criteria to be employed in reaching a decision.	
Clause (6) requires that a decision be rendered within 45 days of the conclusion of the last hearing.	
Clause (7) 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) 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 was derived from and is identical to provisions set forth in former Sections 1004(2)(f) and 1005 of the MPC.	**1988-170**
Subsection (e) sets forth notice requirements for any substantive validity challenge.	**1988-170**
Subsection (f) sets forth criteria for determining a deemed denial of a substantive validity challenge.	**1988-170**
Subsection (g) was 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 amendments made to the MPC by Act 130 of 1982. A provision was added to divest the landowner of the protection afforded by this subsection if the landowner fails to proceed with development within specific time limits. This was done 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.	**1988-170**
Subsection (h) was added to stipulate that if a party challenges the validity of a zoning ordinance, where municipalities have adopted a multimunicipal comprehensive plan and are administering zoning ordinances generally consistent with the plan, the governing body or zoning hearing board must proceed as follows:	**2000-67**

[13] *Commentary:* 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 Horn v. Township of Hilltown,* 461 Pa. 745, 337 A.2d 858 (1975); *Gardner v. Repasky,* 434 Pa. 126, 252 A.2d 704 (1969); *Newtown Township Board of Supervisors v. Greater Media Radio Company,* 138 Pa. Cmwlth. 157, 587 A.2d 841 (1991); *Sultanik v. Board of Supervisors of Worcester Township,* 88 Pa. Cmwlth. 214, 488 A.2d 1197 (1985).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
To determine whether a particular use is available within a reasonable geographic area, the administrative bodies must consider the provision made for this use within the entire area covered by the zoning ordinances of the participating municipalities, not merely the municipality where the proposed use is located.[14]	
Subsection (i) was added to prevent a landowner who has challenged the validity of a zoning ordinance or map from filing any additional challenges involving the same parcel until the original challenge is decided or withdrawn; however, when the municipality adopts a substantially new or different zoning ordinance or map after the original challenge, the landowner may file a second challenge to the new or different zoning ordinance or map.	**2000-127**
Section 916.2. Procedure to Obtain Preliminary Opinion.	
This section was derived from and contains the elements of Section 1005(b) of the pre-Act 170 of MPC. No substantive change was made.	**1988-170**
Section 917. Applicability of Ordinance Amendments.	
This section contains language that was moved from Section 603(c)(2.1) by Act 68 of 2000, with no substantive changes. Act 127 of 2000 then made a technical amendment to the section; it clarified that if an application for a special exception or conditional use, which would constitute a land development or subdivision, is approved by either the zoning hearing board or governing body, as relevant, the applicant is entitled, for a period of *at least six months, or longer, as may be approved by either the zoning hearing board or the governing body,* following the date of such approval to proceed with the submission of plans in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed before either the zoning hearing board or governing body. (Emphasis added to affected language.)	**2000-68** **2000-127**
Section 918. Special Applicability Provisions.	
This section was added to provide that a municipal zoning ordinance, enacted on or before August 21, 2000, shall not be invalidated, superseded, or affected by the amendatory provisions of Acts 67 and 68 of 2000 until on or after February 22, 2001.	**2000-127**

[14] *Commentary:* This same provision was added to Section 1006-A (Judicial Relief) as subsection (b.1), and a related provision also was added in Section 1103 (Finances, Staff and Program. County or Multimunicipal Comprehensive Plans) as clause (a)(4). Both were added by Act 67 of 2000. These provisions are substantially similar to Section 811-A (Area of Jurisdiction for Challenges), which provides for court review of the validity of joint municipal zoning ordinances. *See also supra* Chapter 2, note 6, p. 8.

Article X – Appeals

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

Article X-A – Appeals to Court

The provisions of this 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 the preceding one is that Article IX (Zoning Hearing Board and other Administrative Proceedings) governs matters of administrative jurisdiction and appeals of determinations, as defined in Section 107(b), to local agencies. This article governs all appeals to the courts of common pleas after decisions are made by local agencies on matters within their original administrative jurisdiction or concerning matters that are appealed from such agencies for a decision.

Manner in Which Articles and Sections are Impacted	Amendatory Acts
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 MPC can be reviewed or appealed in any manner whatsoever, other than as set forth in Article X-A. It was derived from former Section 1001.	**1988-170**
Section 1002-A. Jurisdiction and Venue on Appeal; Time for Appeal.	
This section expressly states that any decision rendered pursuant to Article IX is appealable only to 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 as required by Title 42 of Pa.C.S., Section 5572.	**1988-170**
Section 1003-A. Appeals to Court; Commencement; Stay of Proceedings.	
This section clarifies procedures for appeals. It was derived from former Section 1008. Subsections (a), (b), and (c) are similar to former Section 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 an appellant to petition the court for a stay of the proceedings and to require, under certain circumstances, that an appellant seeking to prevent a use or development by another post a security bond pending determination of the appeal. It is identical to former Section 1008(4) in all respects, except: (1) the court is not required to decide	**1988-170**

Manner in Which Articles and Sections are Impacted	Amendatory Acts
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; (2) a provision was added to place the burden of proof on the issue of frivolity on the landowner; and (3) a provision was added to expressly state that an order denying or granting a petition for the posting of a bond is not immediately appealable as a matter of right because it is not a final order.[1]	
Section 1004-A. Intervention.	
This section was derived from and is identical to Section 1009 of the pre-Act 170 MPC. It provides for a right of intervention in the appellate proceedings by the municipality or any owner or tenant of property who is directly involved in the proceedings before the local agency.	**1988-170**
Section 1005-A. Hearing and Argument of Land Use Appeal.	
This section was derived from Section 1010 of the pre-Act 170 MPC. If the court determines that the record is incomplete or that additional evidence is necessary for its decision, this section requires the court to hear the additional evidence itself, to remand the case to the local agency, or to appoint a referee to receive additional evidence.[2]	**1988-170**

[1] *Commentary:* Task Force deliberations 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, the Task Force intended to shift the burden of production of evidence and the burden of proof to the appellant (who would be the respondent to the landowner's petition for a bond) to prove that the appeal is indeed not frivolous since, generally speaking, the facts and circumstances concerning whether frivolity exists are usually within the control of the appellant.

However, an amendment offered on the floor of the House of Representatives changed this language to shift that burden of proof to the landowner whose use or development is in question, rather than the respondent to the petition for a bond (i.e., the appellant). If an appeal is frivolous, the court must order the appellant to post a bond and the appeal proceeds. Any order on the petition for posting a bond is intended to be unappealable since it is not a final determination of the appeal that would deprive the appellant of his day in court.

A provision was added that applies in the case of an order of court dismissing a land use appeal for refusal to post a bond. If an appeal is taken from that order by the respondent to the petition for posting the bond, the respondent, upon motion of the petitioner and after hearing, shall be required to pay all reasonable costs, expenses, and attorney's fees which may be incurred by the petitioner as a result of the appeal. This provision was 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. *See Sampaolo v. Cheltenham Township Zoning Hearing Board,* 141 Pa. Cmwlth. 511, 596 A.2d 287 (1991) (limiting award of attorney fees for a frivolous appeal to only fees incurred in connection with the appeal).

[2] *Commentary:* This section was amended to permit remands to a local agency except in appeals filed under Section 916.1 (Validity of Ordinance; Substantive Questions). This principle was advanced in several appellate decisions that found a "useful purpose [would] be served by a remand" to local agencies in order to more clearly delineate the specifics of local decisions subject to further interpretation on appeal. *See, e.g., Bridgeview Apartments, Inc. v. Brady,* 31 Pa. Cmwlth. 126, 375 A.2d 854 (1977).

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 1006-A. Judicial Relief.	
This section was derived from Section 1011 of the pre-Act 170 MPC and, pursuant to Act 170 of 1988, provides authority for the court to invalidate or modify any action, decision, or order of a local land use agency or its officials and agents. Two subsections were added by Act 67 of 2000 and Act 68 of 2000 to respectively stipulate that:	**1988-170**
Subsection (b.1) – If a party challenges the validity of a zoning ordinance, where municipalities have adopted a multimunicipal comprehensive plan and are administering zoning ordinances generally consistent with the plan, a court on appeal from a decision of a governing body or zoning hearing board must proceed as follows: To determine whether a particular use is available within a reasonable geographic area, the court must consider the provision made for this use within the entire area covered by the zoning ordinances of the participating municipalities, not merely the municipality where the proposed use is located.[3]	**2000-67**
Subsection (b.2) – Each municipal zoning ordinance shall provide for reasonable coal mining activities.	**2000-68**

[3] *Commentary:* This same provision also was added to Section 916.1 (Validity of Ordinance; Substantive Questions) as subsection (h), and a related provision also was added in Section 1103 (Finances, Staff and Program. County or Multimunicipal Comprehensive Plans) as clause (a)(4). Both were added by Act 67 of 2000. *See also supra* Chapter 2, note 6, p. 8.

Article XI – Intergovernmental Cooperative Planning and Implementation Agreements

The contents of this article are part of, as termed by some, the "growing smarter" legislation of 2000. The provisions were first introduced on June 11, 1997, in House Bill 1614 as a proposed new Article VI-A of the MPC. The bill immediately was referred to the House Local Government Committee, where it resided through the end of the 1997-1998 Legislative Session. The language then was reintroduced during the 1999-2000 Legislative Session, largely as a revamped Article XI, in House Bill 14, which evolved through four printer's numbers before it was passed and enacted on June 22, 2000, as Act 67. In addition to the contents of this article, Act 67 also added or amended related provisions in Section 107 (Definitions), Section 916.1 (Validity of Ordinance; Substantive Questions), Section 1006-A (Judicial Relief), and Section 1202 (General Repeal). The provisions of this article replaced those of the formerly titled "Joint Municipal Planning Commissions" article, but, as stated in Section 1107 (Saving Clause), these new provisions do not invalidate any joint municipal planning commission established under the former provisions of this article; a joint municipal planning commission will continue to function under the amended provisions of this article. Article XI generally enables and facilitates the use of intergovernmental cooperative agreements among local governments to develop and implement multimunicipal comprehensive plans in order for the local governments to realize land use-related benefits that they may not fully realize individually.

Manner in Which Articles and Sections are Impacted	Amendatory Acts*
Section 1101. Purposes.	
This section enumerates the stated purposes of this article.	**2000-67***
Section 1102. Intergovernmental Cooperative Planning and Implementation Agreements.	
This section provides that governing bodies of municipalities located in a county or counties may enter into intergovernmental cooperative agreements, as provided by Title 53 of Pa.C.S., Chapter 23, Subchapter A (relating to intergovernmental cooperation) (except for any provisions permitting initiative and referendum by the electorate), for the purpose of developing, adopting, and implementing a comprehensive plan for the entire county or for the area governed by the cooperating municipalities.	
Section 1103. County or Multimunicipal Comprehensive Plans.	
Subsection (a) provides that the municipalities or, at the request of the municipalities, the county planning agency(ies), in cooperation with the municipalities, may develop a comprehensive plan pursuant to an intergovernmental cooperative agreement;	

* Act 67 of 2000 effected the amendment of Article XI in its entirety.

Manner in Which Articles and Sections are Impacted	Amendatory Acts*

the comprehensive plan must, among other things, embody all the elements in Section 301 (Preparation of a Comprehensive Plan), including a plan to meet the housing needs of present and anticipated future residents. The subsection further provides that the county or multimunicipal comprehensive plan may:

Clauses (1), (2), and (3) – Designate growth areas, potential future growth areas, and rural resource areas, as defined.

Clause (4) – Plan for the accommodation of all categories of uses within the area of the plan.[1]

Clause (5) – Plan for developments of areawide significance.

Clause (6) – Plan for the conservation and enhancement of natural, scenic, historic, and aesthetic resources.

Subsection (b) specifies that the county may facilitate a multimunicipal planning process that includes public participation by all entities and parties affected by the plan.

Subsection (c) "grandfathers" conforming plans that are less than five years old prior to the date of adoption of this article amending the MPC.

Section 1104. Implementation Agreements.

Subsection (a) restates that counties and municipalities have the authority to enter into intergovernmental cooperative agreements.

Subsection (b) further stipulates that implementation agreements must:

Clause (1) – Establish the process to achieve general consistency between a multimunicipal (or county) plan and land use ordinances and capital improvements plans within two years.

Clause (2) – Establish the process to review and approve developments of regional significance and impact. Under no circumstances must a subdivision or land development applicant undergo more than one approval process.

Clause (3) – Establish the role and responsibilities of participating municipalities with respect to implementation of the comprehensive plan, including, among other things, the provision of public infrastructure services within participating municipalities.

Clause (4) – Require a yearly report by participating municipalities to the county planning agency and by the county planning agency to the participating municipalities.

* Act 67 of 2000 effected the amendment of Article XI in its entirety.

[1] *See* related provisions which were added to Section 916.1 (Validity of Ordinance; Substantive Questions) as subsection (h) and Section 1006-A (Judicial Relief) as subsection (b.1) by Act 67 of 2000. *See also supra* Chapter 2, note 6, p. 8.

Manner in Which Articles and Sections are Impacted	Amendatory Acts*

Clause (5) – Describe any other duties and responsibilities as the parties may agree upon.

Subsection (c) enables implementation agreements to designate growth areas, future growth areas, and rural resources areas within the comprehensive plan.

Subsection (d) entitles the county to facilitate convening the representatives of municipalities, municipal authorities, special districts, public utilities, whether public or private, or other agencies that provide or declare an interest in providing a public infrastructure service in a public infrastructure area for the purpose of negotiating agreements for the provision of such services.

Section 1105. Legal Effect.

Subsection (a) provides that where a county plan or multimunicipal plan is adopted and implemented:

Clause (1) – Sections 916.1 (Validity of Ordinance; Substantive Questions) and Section 1006-A (Judicial Relief) shall apply.

Clause (2) – State agencies must consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for funding or permitting of infrastructure or facilities.

Clause (3) – State agencies must consider and may give priority consideration to applications for financial or technical assistance for projects consistent with the county or multimunicipal plan.

Subsection (b) provides that municipalities which have entered into implementation agreements will have additional powers to provide for the voluntary sharing of tax revenues and fees and to adopt a multimunicipal transfer of development rights program.

Subsection (c) stipulates that this article should not be construed to authorize a municipality to regulate the allocation or withdrawal of water resources by an entity subject to regulation by the PUC or other Federal or State agencies or statutes.

Subsection (d) further provides that this article is not intended to limit the authority of the PUC in the implementation, location, construction, and maintenance of public utility facilities and the rendering of public utility services to the public, except as provided in Section 619.2 (Effect of Comprehensive Plans and Zoning Ordinances), where Commonwealth agencies must consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities.

* Act 67 of 2000 effected the amendment of Article XI in its entirety.

Manner in Which Articles and Sections are Impacted	Amendatory Acts*

Section 1106. Specific Plans.

Subsection (a), to expedite development approval, gives participating municipalities authority to adopt a specific plan for the systematic implementation of the comprehensive plan for any nonresidential area. It requires that the specific plan include text, diagram(s), and implementing ordinances that specify criteria for land uses; sewer, water, and drainage facilities; transportation facilities; population density, land coverage, building intensity, and supporting services; natural resources; and a program for implementation.

Subsection (b) requires that:

Clause (1) – In order for a specific plan to be adopted or amended, it must be consistent with the adopted county or multimunicipal comprehensive plan.

Clause (2) – In order for any capital project by any municipal authority or municipality or any final plan, development plan, or plat for any subdivision or land development to be approved, it must be consistent with the adopted specific plan.

Subsection (c) requires that the procedures provided in this article for adopting comprehensive plans and ordinances also are used by a county and participating municipalities in adopting or amending a specific plan.

Subsection (d) provides that, where a specific plan has been adopted, applicants for subdivision or land development approval need only submit a final plan as provided in Article V (Subdivision and Land Development), as long as it is consistent with and implements the specific plan.

Subsection (e) prohibits a county or counties and participating municipalities from assessing subdivision and land development applicants for the cost of the specific plan.

Section 1107. Saving Clause.

This section provides that the replacement of the provisions of this article, which was formerly entitled "Joint Municipal Planning Commissions," with the new provisions of this article, re-entitled "Intergovernmental Cooperative Planning and Implementation Agreements," does not invalidate any joint municipal planning commission established under the former provisions of this article; a joint municipal planning commission will continue to function under the amended provisions of this article.

* Act 67 of 2000 effected the amendment of Article XI in its entirety.

Article XI-A – Joint Municipal Zoning

This article was repealed. Its provisions, with amendments, are contained in new Article VIII-A (Joint Municipal Zoning) of Act 170 of 1988.

Article XII – Repeals

Manner in Which Articles and Sections are Impacted	Amendatory Acts
Section 1201. Specific Repeals.	
This section contains all provisions for and delineations of specific repeals of statutes affected by the MPC.	
Section 1202. General Repeal.	
This section was amended to provide that the MPC will not repeal or modify any of the provisions of Title 66 of Pa.C.S., Part 1 (relating to the Public Utility Code), versus the originally cited "Public Utility Law," or Title 68 of Pa.C.S., Part II, Subpart B (relating to condominiums), or any laws administered by the Department of Transportation, versus the originally cited Department of Highways.	**1988-170** **2000-67**

Statutes Amending the Pennsylvania Municipalities Planning Code: 1968-2012

The following statutes amended the act of July 31, 1968, P.L. 805, No. 247 (Senate Bill 1148, Printer's Number 2285), known as the "Pennsylvania Municipalities Planning Code" (MPC), since its enactment:

- The act of June 3, 1971, P.L. 118, No. 6 (Senate Bill 282, Printer's Number 284).[1]
- The act of June 1, 1972, P.L. 333, No. 93 (House Bill 1129, Printer's Number 2639).
- The act of July 20, 1974, P.L. 566, No. 194 (House Bill 1732, Printer's Number 2873).
- The act of December 10, 1974, P.L. 822, No. 272 (House Bill 1555, Printer's Number 3641).
- The act of April 18, 1978, P.L. 38, No. 20 (Senate Bill 663, Printer's Number 705).
- The act of April 28, 1978, P.L. 202, No. 53 (House Bill 825, Printer's Number 2469).[2]
- The act of June 9, 1978, P.L. 460, No. 60 (Senate Bill 844, Printer's Number 1837).
- The act of September 28, 1978, P.L. 785, No. 150 (House Bill 263, Printer's Number 3413).
- The act of October 4, 1978, P.L. 990, No. 203 (House Bill 199, Printer's Number 3688).
- The act of October 5, 1978, P.L. 1067, No. 249 (Senate Bill 1008, Printer's Number 2166).
- The act of November 26, 1978, P.L. 1209, No. 284 (House Bill 1097, Printer's Number 1274).
- The act of July 13, 1979, P.L. 105, No. 43 (House Bill 459, Printer's Number 491).
- The act of December 19, 1980, P.L. 1293, No. 231 (Senate Bill 1252, Printer's Number 2193).
- The act of October 16, 1981, P.L. 293, No. 101 (Senate Bill 775, Printer's Number 1027).
- The act of June 9, 1982, P.L. 441, No. 130 (House Bill 1856, Printer's Number 3281).
- The act of June 23, 1982, P.L. 613, No. 173 (House Bill 1512, Printer's Number 3376).
- The act of June 24, 1982, P.L. 628, No. 177 (House Bill 1585, Printer's Number 3286).
- The act of May 2, 1986, P.L. 137, No. 42 (Senate Bill 901, Printer's Number 2023).

[1] Act 6 of 1971 amended the "Appellate Court Jurisdiction Act of 1970," in part, repealing Section 1012 of the MPC.

[2] Act 53 of 1978, known as the "Judiciary Act Repealer Act," in part, repealed portions of Article X of the MPC.

- The act of March 30, 1988, P.L. 334, No. 46 (Senate Bill 404, Printer's Number 436).
- The act of December 21, 1988, P.L. 1329, No. 170 (Senate Bill 535, Printer's Number 2556).
- The act of December 19, 1990, P.L. 1343, No. 209 (House Bill 1361, Printer's Number 4295).
- The act of December 14, 1992, P.L. 815, No. 131 (Senate Bill 1505, Printer's Number 2636).
- The act of May 27, 1994, P.L. 251, No. 38 (House Bill 1760, Printer's Number 3390).
- The act of December 18, 1996, P.L. 1102, No. 165 (Senate Bill 1197, Printer's Number 2448).
- The act of October 16, 1998, P.L. 782, No. 97 (House Bill 591, Printer's Number 2587).
- The act of June 18, 1999, P.L. 70, No. 10 (House Bill 1335, Printer's Number 1582).
- The act of June 22, 2000, P.L. 483, No. 67 (House Bill 14, Printer's Number 3711).
- The act of June 22, 2000, P.L. 495, No. 68 (Senate Bill 300, Printer's Number 2058).
- The act of December 20, 2000, P.L. 940, No. 127 (House Bill 1604, Printer's Number 4070).
- The act of January 11, 2002, P.L. 13, No. 2 (House Bill 1219, Printer's Number 3066).
- The act of May 9, 2002, P.L. 305, No. 43 (House Bill 411, Printer's Number 3792).
- The act of December 9, 2002, P.L. 1705, No. 215 (Senate Bill 1452, Printer's Number 2439).[3]
- The act of November 19, 2004, P.L. 831, No. 99 (House Bill 796, Printer's Number 4409).
- The act of November 30, 2004, P.L. 1613, No. 206 (Senate Bill 892, Printer's Number 1785).
- The act of July 4, 2008, P.L. 319, No. 39 (House Bill 1329, Printer's Number 3192).
- The act of November 23, 2010, P.L. 1101, No. 111 (House Bill 1609, Printer's Number 2269).
- The act of July 5, 2012, P.L. 928, No. 97 (House Bill 823, Printer's Number 3792).
- The act of October 24, 2012, P.L. 1258, No. 154 (House Bill 1718, Printer's Number 3804).

[3] Act 215 of 2002, in essence, *replaces* Section 909.1(a)(2) of the MPC with the amendment of Title 42 of the Pennsylvania Consolidated Statutes (Pa.C.S.) (Judiciary and Judicial Procedure), Section 5571(c)(5), which requires that a procedural challenge be brought within 30 days of the "intended effective date" of the ordinance, resolution, map, or similar action; "intended effective date" is defined in the amendatory language. Act 215 does not modify the MPC, per se, but it legally applies "notwithstanding section 909.1(a)(2)." *See also supra* Chapter 3, Article IX (Zoning Hearing Board and other Administrative Proceedings), note 2, p. 99.