

Public Participation, Public Power

A Community Guide to Local Land Use Decision-Making in Pennsylvania





About PennFuture

Citizens for Pennsylvania's Future ("PennFuture") is a member-supported, statewide environmental advocacy nonprofit and watchdog fighting against potential threats to Pennsylvania's clean air, pure water, and healthy climate. Since 1998, PennFuture has combined legislative advocacy, educational outreach, civic engagement, and legal action at the local, state, and federal levels for just and equitable environmental outcomes that improve the quality of life for all Pennsylvanians.

PennFuture has stood at the forefront of major environmental milestones in Pennsylvania as a bold and vigilant defender of communities against pollution and environmentally harmful policies.

We have offices across Pennsylvania, including Harrisburg, Pittsburgh, Philadelphia, Erie, and the Poconos.

Acknowledgements

PennFuture would like to thank the Kentfields Foundation and the William Penn Foundation for making this publication possible. *The opinions expressed in this report are those of PennFuture and do not necessarily reflect the views these foundations.*

A special thank you to Brigitte Meyer, Staff Attorney at PennFuture, for her research and drafting of this guidebook. PennFuture would also like to thank all those outside of the organization who provided their time and expertise in reviewing information, answering questions, and providing valuable comments and insights on the matters covered herein.

TABLE OF CONTENTS

SECTION 1 OVERVIEW

| | |
|--|---|
| Introduction | 3 |
| Land Use Is an Environmental Issue | 4 |
| So You Live in a Municipality | 7 |
| Municipal Powers | 8 |

SECTION 2 UNDERSTANDING STATE AND LOCAL LAND USE LAWS

| | |
|---|----|
| The Municipalities Planning Code | 9 |
| Why Land Use Decisions are Rooted in Ordinances | 9 |
| Types of Land Use Ordinances | 12 |
| Zoning Ordinances | 12 |
| SALDOs | 13 |
| Other Types of Ordinances | 13 |
| Finding and Reading Land Use Ordinances | 13 |
| Ordinances Are Where the Action Is | 14 |
| ■ TIPS FOR PROPOSING ORDINANCE AMENDMENTS | 15 |
| Model Ordinances | 17 |
| Resolutions | 18 |
| The Comprehensive Plan | 18 |

SECTION 3 UNDERSTANDING LAND USE DECISIONS AND LOCAL DECISION-MAKING BODIES

| | |
|---|----|
| Land Use Decisions | 19 |
| Types of Land Use Decisions | 19 |
| Getting to Know Your Local Decision-Making Bodies | 21 |
| The Governing Body | 21 |
| The Planning Commission | 22 |
| The Environmental Advisory Council | 23 |
| The Zoning Hearing Board | 23 |
| The Zoning Officer | 24 |

SECTION 4 UNDERSTANDING PUBLIC MEETINGS AND HEARINGS

| | |
|--|----|
| Public Meetings and Hearings | 25 |
| Public Meetings | 25 |
| Hearings | 25 |
| Executive Sessions | 27 |
| How to Find Out About Public Meetings and Hearings | 27 |
| The “Newspaper of General Circulation” | 27 |
| Regularly Scheduled Meetings | 29 |
| Agendas | 29 |
| Physical Posting | 29 |
| Other ways of finding out about upcoming decisions | 30 |
| What if I miss a meeting? | 30 |
| Who’s Who at a Public Meeting or Hearing | 31 |

SECTION 5 PARTICIPATING IN PUBLIC MEETINGS AND HEARINGS

| | |
|--|----|
| Making Public Comment..... | 33 |
| ■ TIPS FOR MAKING EFFECTIVE PUBLIC COMMENTS..... | 33 |
| Participating as a Party in Public Hearings..... | 35 |
| Party Time!..... | 35 |
| Seeking Party Status..... | 36 |
| Cross-examining Witnesses..... | 36 |
| ■ TIPS FOR CROSS-EXAMINING WITNESSES..... | 37 |
| Presenting Evidence..... | 38 |
| ■ TIPS FOR PRESENTING EVIDENCE..... | 38 |
| A Word on Expert Witnesses..... | 39 |
| ■ TIPS FOR PRESENTING EXPERT WITNESSES..... | 39 |
| Briefing and Oral Argument..... | 40 |
| ■ TIPS FOR BRIEFING AND ORAL ARGUMENT..... | 40 |
| When to Get a Lawyer..... | 41 |
| Appeals..... | 42 |

SECTION 6 THE RIGHT TO KNOW LAW

| | |
|---|----|
| The Right to Know Law..... | 43 |
| Things to Know about the RTKL..... | 43 |
| ■ TIPS FOR MAKING RIGHT TO KNOW LAW REQUESTS..... | 44 |

SECTION 7 OTHER THINGS YOU SHOULD KNOW

| | |
|---|----|
| NIMBYs, BANANAs, and CAVE people..... | 45 |
| A Word about Community Associations..... | 46 |
| A General Note About Decision-Making..... | 46 |
| A Note About Deadlines..... | 47 |

SECTION 8 QUICK REFERENCE GUIDES

| | |
|------------------------------------|----|
| Types of Land Use Proceedings..... | 48 |
|------------------------------------|----|

LAND USE DECISION FACT SHEETS

| | |
|---|----|
| Land Use Ordinance Adoption or Amendment..... | 49 |
| Conditional Use or Special Exception Application..... | 52 |
| Variance Application..... | 57 |
| Subdivision and Land Development Application..... | 61 |
| Appeal of Zoning Officer's Determination..... | 66 |
| Planned Residential Development Application..... | 68 |
| Substantive Validity or Curative Amendment Challenge..... | 71 |

APPENDICES

| | |
|---|----|
| Appendix A – Glossary..... | 74 |
| Appendix B – How to Read Ordinances..... | 80 |
| Appendix C – Additional Advocacy Tools..... | 88 |

OVERVIEW

INTRODUCTION¹

You are likely reading this guidebook because you have learned that your township, borough, or city² is making a decision about a proposed development or other **land use** issue, and you want your voice to be heard in the decision-making process. Bravo! An informed and involved public is crucial to healthy communities.

But you do not want to be simply shouting at the sky. You want your voice to be *effective* and *persuasive* in bringing about the change you want to see. This requires more than passion. It requires knowledge of the several types of local land use decisions, the decision-making bodies who make those decisions, the procedure for making them, and what goes into each decision. This book is designed to give you that knowledge.

TIP!

Definitions of **bolded terms** throughout this guidebook can be found in the glossary in Appendix A.

But you don't have to take our word for it!

PennFuture surveyed over 100 municipal officials across Pennsylvania to find out what they have to say about public engagement in the land use decision-making process. Overwhelmingly, respondents expressed a desire to hear **YOUR** voice. When asked to suggest best practices for local residents, local officials' number one suggestion was "attend meetings regularly." These decision-makers want to encourage residents to become involved in all stages of land use planning and decision-making and to be proactive about what they want to see in their community instead of only showing up to react negatively to individual land development proposals. Decision-makers also expressed a desire for residents to be informed about the rules governing the decision-making process so that they can more effectively participate in and understand how decisions are made.



¹ The information provided herein does not, and is not intended to, constitute legal advice. All information, content, and materials presented are for general information purposes only.

² Philadelphia and Pittsburgh are governed by similar, but different, land use laws than other municipalities in Pennsylvania. Therefore, this guidebook does not apply in those cities.

LAND USE IS AN ENVIRONMENTAL ISSUE

Land use is a critically important but often overlooked environmental issue. How land is used can have specific and cumulative effects on water quality, air quality, wildlife habitat, climate, and human health.³ For example:

- Development of previously undeveloped land creates **impervious surfaces**. Impervious surfaces prevent water from seeping into the ground and increase the volume, rate, and velocity of stormwater runoff into waterways. If not properly managed, this can result in damage to stream channels, loss of stream habitat, reduction in groundwater recharge, and flooding.⁴ Impervious coverage is also the largest factor contributing to degradation of water quality in most watersheds.⁵ Water quality in a watershed degrades when impervious cover exceeds 10 percent of the total watershed areas, and degrades severely when it exceeds 25 percent.⁶ Sensitive streams such cold-water fisheries can be impacted by as little as 5 to 10 percent impervious surface area within their watershed boundaries.⁷

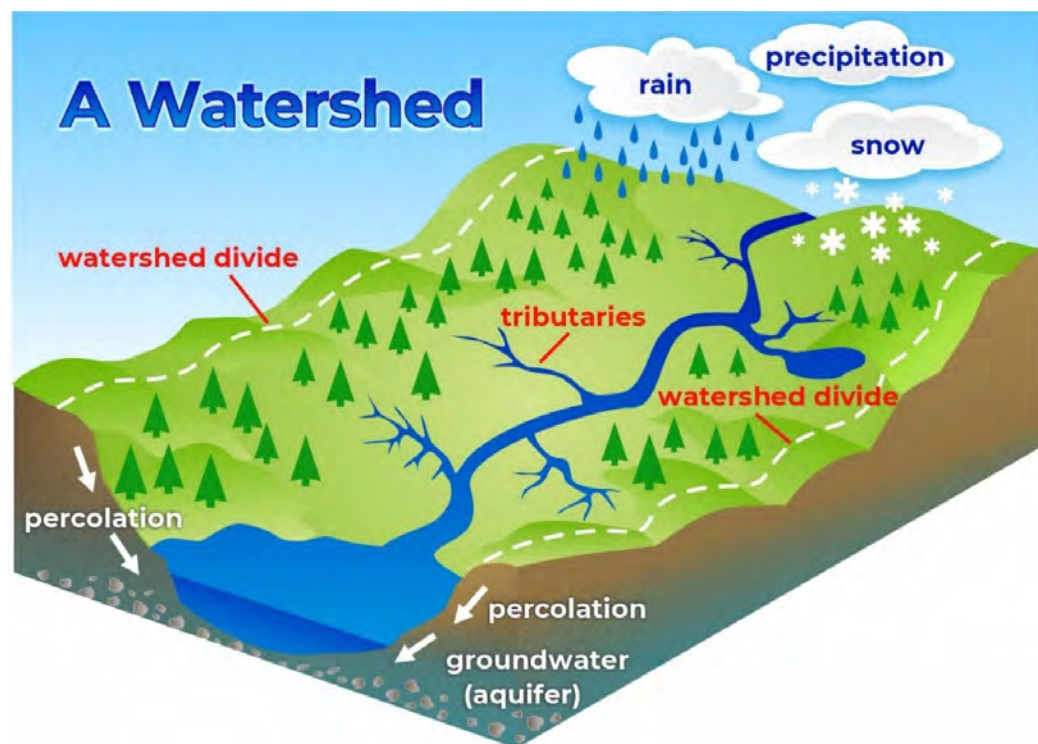


Figure 1 <https://storymaps.arcgis.com/stories/d945de2b227b44f5adad48faa36af929>

A watershed is an area of land that channels rainfall, snowmelt, and runoff into a common body of water, such as a creek, river, or lake. The scale of the watershed can be small, like the area that drains to a trickling brook, or large, like the multistate Delaware, Susquehanna, or Ohio River basins.

³ *Report on the Environment: Land Use*, United States Environmental Protection Agency, EPA.GOV, <https://www.epa.gov/report-environment/land-use> (last visited Sept. 19, 2023).

⁴ U.S. Dept. of the Int., U.S. Geological Survey, STRATEGIES FOR MANAGING THE EFFECTS OF URBAN DEVELOPMENT ON STREAMS 14 (2012).

⁵ N.J. Highlands Water Protection and Planning Council, POLICY STANDARDS FOR WAREHOUSING IN THE NEW JERSEY HIGHLANDS REGION 12 (2023).

⁶ Id.

⁷ National Oceanic and Atmospheric Administration, HOW TO USE LAND COVER DATA AS AN INDICATOR OF WATER QUALITY: DESCRIPTION OF DATA AND DERIVATIVES USED 3 <https://coast.noaa.gov/data/digitalcoast/pdf/water-quality-indicator.pdf#page=3>; N.J. Highlands Water Protection and Planning Council, POLICY STANDARDS FOR WAREHOUSING IN THE NEW JERSEY HIGHLANDS REGION 12 (2023).

- Converting natural ground cover into impervious surface, grass, or crops can cause habitat loss and decrease biodiversity. It can also lead to the formation of developed areas that experience higher temperatures than the surrounding area, known as heat islands.⁸
- Dispersed land development, where residential, commercial, institutional, industrial, and recreational uses are separated from one another (“sprawl”), forces longer, more frequent vehicle trips, increasing greenhouse gas emissions and other air pollutants.⁹
- Agricultural land uses can result in loss of native habitats, increase wind erosion, limit the amount of water available for other uses and degrade water quality by introducing pesticides, fertilizers, and nutrients from animal manure into water sources.¹⁰

Pennsylvania’s Environmental Rights Amendment

Did you know that the Pennsylvania is one of only three states where the people have a constitutional right to a healthy environment? Pennsylvania’s Environmental Rights Amendment, Article I, Section 27 of the Pennsylvania Constitution, provides that “the people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.” It also states that “Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come.” Because of this, all state government bodies, including municipalities, must conserve and maintain those resources “for the benefit of all the people.”



⁸ *Report on the Environment: Land Use*, United States Environmental Protection Agency, EPA.GOV, <https://www.epa.gov/report-environment/land-use> (last visited Sept. 19, 2023).

⁹ *Id.*

¹⁰ *Id.*

In Pennsylvania, local laws called **ordinances** control many of the aspects of land use and development that affect these factors. For instance, local ordinances control:

- The amount of land in the municipality that can be developed and for what purposes;
- Where various types of land uses may be located, either encouraging or discouraging sprawl;
- Density of development, i.e., how large and close together buildings may be, which in turn influences how much land is consumed by development;
- How much of any given parcel of land may be covered with impervious surface;
- How much parking must be provided by each land use, which greatly impacts the amount of impervious surface;
- Whether and to what extent certain land uses, and development in general, may occur near sensitive natural resources such as woodland, streams, wetlands, steep slopes, and scenic views;
- Whether land developers must limit disturbance of environmental resources on their property and/or reduce impacts to those resources if they occur; and
- The extent to which landowners must limit noise and light pollution coming from their property.

Local land use decisions like those discussed in this guidebook are how local governments create and enforce these rules. By learning how to effectively participate in the decision-making process, you can help ensure that your municipality is doing its part in this important aspect of environmental protection.

Did you know?

Pennsylvania is one of four states – along with Massachusetts, Virginia, and Kentucky – that refer to themselves as commonwealths, not states. The distinction is in name only. There is no difference between how commonwealths and states are governed or how they relate to the other states or federal government. The founders of these states simply preferred the term Commonwealth.



SO, YOU LIVE IN A MUNICIPALITY

If you remember Schoolhouse Rock, you know there are three levels of government in the United States – federal, state, and local. The federal government, with its larger-than-life characters, headline grabbing events, and wide-ranging impacts, tends to get all the attention, but much of the *real* action takes place in state and local government. In fact, local government, the level of government closest to home, controls many of the things that have the greatest impact on our day-to-day lives, including how land is used.

Local governments are called **municipalities**. There are three types of municipalities in Pennsylvania: cities, boroughs, and townships. They come in all sizes, from the Commonwealth's largest city, Philadelphia (population, 1.5 million), to more than 100 municipalities with populations of less than 200.¹¹ Some municipalities have a land area of over one hundred square miles, while others cover less than a tenth of a square mile. Pennsylvania has a lot of municipalities—56 cities, 956 boroughs, and 1,547 townships—for a total of over 2,560 municipalities, more than any other state except Illinois.

Municipal governments vary in structure and may include a mayor, a **governing body**, and other decision-making bodies such as a zoning hearing board (ZHB). The different types of decision-making bodies are discussed in more detail in the following pages.

Fun Facts!

There is only one town in Pennsylvania – Bloomsburg. Every other municipality is either a city, a borough or a township.

Shippen Township, Cameron County, is the largest municipality in Pennsylvania by land area. It encompasses over 150 square miles and is larger than each of the Commonwealth's two smallest counties (Philadelphia and Montour). The smallest municipality by land area is Coaldale Borough, Bedford County. It encompasses only 19 acres.



¹¹ https://www.pennsylvania-demographics.com/cities_by_population



MUNICIPAL POWERS

Municipal governments are responsible for many things that impact our day-to-day lives. Municipalities maintain local streets and roads and keep them free of snow and ice in the winter. They own and maintain public libraries, parks, playgrounds, and other public land. They organize community events. Many employ a local police force or fire department and provide services such as sewage disposal and trash collection.

Municipalities also enact ordinances to govern certain aspects of life for the benefit of the health, safety, and welfare of the community. The power to enact such ordinances is called the **police power**. Ordinances apply only in the municipality where they are enacted and may address a wide variety of matters, such as land use, noise, property maintenance, littering, parking on public streets, and the use of fireworks.

This is not to say that municipal governments have unlimited power to pass just any ordinance. Municipalities have only the powers that the **General Assembly** has given (or “delegated”) them through state laws called **statutes**. In general, these statutes give municipalities broad power to enact ordinances. For example, the Second Class Township Code, a statute governing certain townships, gives these townships power to pass ordinances as “necessary for the proper management, care and control of the township and its finances and the maintenance of peace, good government, health and welfare of the township and its citizens, trade, commerce and manufacturers.” But some things are “off limits” to municipalities and can only be regulated at the state or federal level. For example, Pennsylvania municipalities cannot regulate liquor licensing, drivers licensing, mining, or forestry operations because only the state can regulate those things. Only the federal government can regulate immigration or enter into treaties with other countries. When a state or federal law prevents a municipality from adopting an ordinance regulating a certain matter, the ordinance is referred to as being **preempted** by the state or federal law.

“But that’s not fair!” you exclaim. “How was I supposed to know I wasn’t allowed to go 40 mph!? If the people living here wanted the speed limit to be lower, they should have gotten the law changed and put up new signs!”

“Maybe,” says the police officer with a shrug, “but they’re the ones who live here and they agreed they don’t want you driving this fast in their community, so that’s the way it is. Have a nice day.”

If you were this driver, you would be right to think this was unfair. Most of us understand that we have a right to know ahead of time whether our actions are lawful or not and what we must do to comply with the law. We have a right not to have our actions be subject to the whims of our neighbors on a case-by-case basis. This applies when we use and develop land, just as it does when we drive. Just like drivers have a right to know what the speed limit is, landowners have a right to know what is and is not permitted on their land before they invest time and money into planning and developing it. In fact, this right is so fundamental to our understanding of how society works that it is enshrined in a constitutional amendment that prohibits deprivation of life, liberty, or property without due process of law. In the context of land development, due process means that a person’s right to use and develop their property cannot be subject to arbitrary, standardless, case-by-case decision-making, even if the decision-makers are neighbors and community members. This is why we have laws like land use ordinances—to let people know the rules for developing and using their land.

A Roller Coaster in Your Backyard!

Land use ordinances also let the surrounding community know what to expect when it comes to land development on others’ property. Take this example from a community in Texas that has no zoning ordinance.

Landowners built this home overlooking Galveston Bay, investing considerable time and expense, only to have the owner of an amusement pier construct a 9-story roller coaster 200 feet from their back door. Because the city has no zoning ordinance, these homeowners had no way of predicting what might be built in their backyard and no way to argue that a roller coaster was inappropriate for the location. They didn’t even have to be told about the construction until lumber began appearing behind their house. Most people do not want to live in a place like this, where anything can be built anywhere with no notice and no restrictions. That’s why land use ordinances exist.



<https://www.chron.com/neighborhood/baytown-news/article/roller-coaster-roils-its-kemah-neighbors-1821598.php>



The right of landowners and the surrounding communities to know what is and is not permitted on land is also why local decision-making bodies must make decisions according to the law, not their own whims or public opinion.¹³ Just like it would be unfair to our driver to put a speed limit in place only to allow residents or local officials to disregard it when it didn't suit them, it would be unfair to a landowner or developer to put a land use ordinance in place only to disregard them when it came to approving or denying a specific land use proposal. By requiring local decision-making bodies to make decisions according to the pre-existing ordinances, we protect everyone from random or biased decisions by government officials and create a predictable development environment for everyone.

Legal Term Alert!

The legal term for a random or biased law is “arbitrary and capricious.”

None of this is to say that the public has no say in land use decision making. In fact, one of the most effective ways for community members to significantly influence local land use is by promoting and supporting the adoption of good land use ordinances (see page 14). There is also a place for public participation in individual land use decisions, as detailed throughout the remainder of this guidebook.

¹³ See *Wash. ex rel. Seattle Title Tr. Co. v. Roberge*, 278 U.S. 116, 121 (1928); *Southpointe Golf Club, Inc. v. Bd. of Supervisors of Cecil Twp.*, 250 A.3d 495 (Pa. Cmwlth. 2021).

TYPES OF LAND USE ORDINANCES

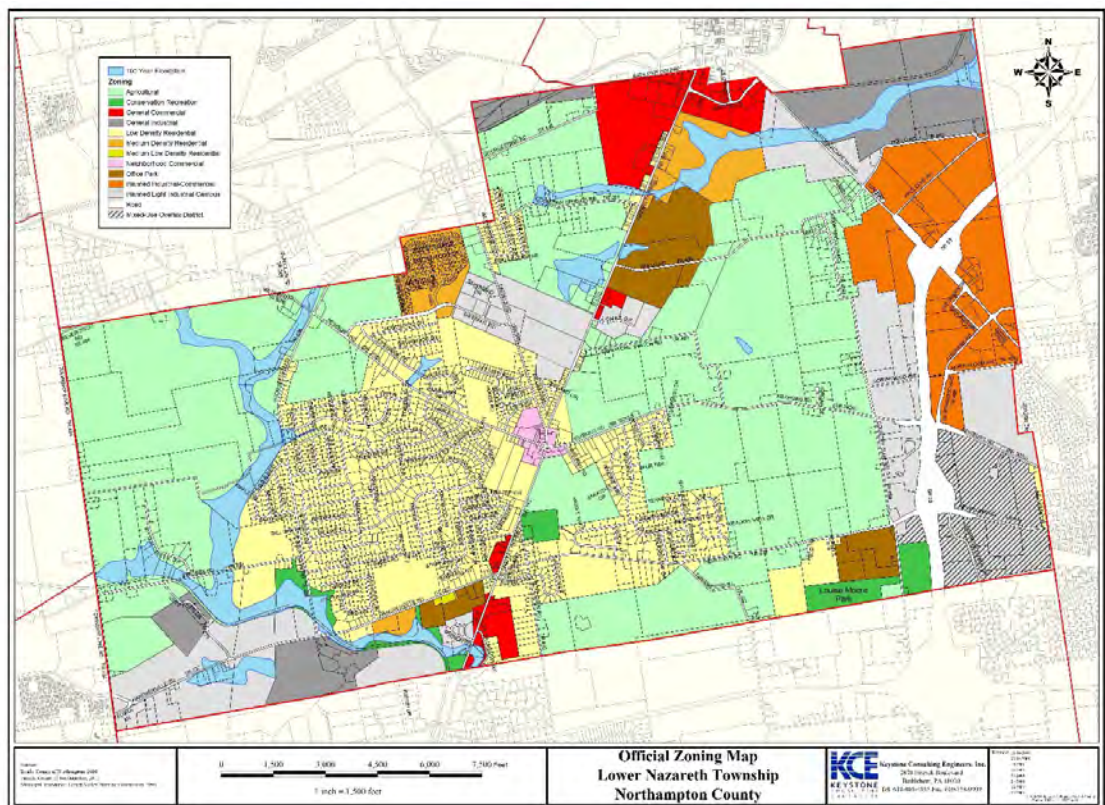
SECTION 2

Now that you have an understanding of why ordinances are important, let's talk more about specific types of land use ordinances. There are two primary types of local land use ordinances: **Zoning ordinances** and **subdivision and land development ordinances** or SALDOs (pronounced "SAL-doh"). They cover similar but different topics.¹⁴

Zoning Ordinances

Zoning ordinances are generally concerned with uses of land and the impact those uses have on the surrounding area.¹⁵ Their main focus is *where* certain uses may take place, not the specific details of construction or how each activity on the land is conducted.¹⁶

Typically, a zoning ordinance consists of two components, a **zoning map** and a text ordinance. The zoning map divides a municipality into a number of **zoning districts** (sometimes called just districts or zones), which are shown on a color-coded map like the one below.



Each zoning district has a unique set of restrictions that apply to the land within that district. These restrictions are set forth in the text of the zoning ordinance. Restrictions may include things like which uses are permitted in each zoning district, the minimum lot size that is required for each use, how large structures may be, and how far back from neighboring property lines structures must be. Zoning

¹⁴ *Ruprecht v. Zoning Hearing Bd.*, 680 A.2d 1214, 1218 (Pa. Cmwlth. 1996) (“Under Pennsylvania law, zoning and subdivision regulations are distinct types of land development controls.”).

¹⁵ See *Carlson v. Ciavarelli*, 100 A.3d 731, 740 (Pa. Cmwlth. 2014).

¹⁶ *Arbor Res. L.L.C. v. Nockamixon Twp.*, 973 A.2d 1036, 1043 (Pa. Cmwlth. 2009) (quotation omitted).

ordinances can also control how land uses impact the natural environment by directing development away from sensitive environmental resources like steep slopes and flood plains and limiting how much of a property can be covered by impervious surface.

SALDOs

SALDOs deal with **subdivision** and **land development**. They primarily address things like the specifics of site layout, design, and engineering for subdivisions and land developments. SALDOs typically contain requirements for things like road access, landscaping, lighting, stormwater management, and how parking areas must be laid out. SALDOs also tell developers what plans and other materials they must submit to the municipality and explain the process for having those plans reviewed and approved. SALDOs may also require developers to sign certain agreements with the municipality promising that they will complete and maintain the **improvements** that are shown on the plans.

Other Types of Ordinances

Other ordinances that are not land use ordinances governed by the MPC may also impact how land is used. For example, a municipality's storm water management ordinance ("SWMO") may impact land use by controlling how close development may come to lakes, ponds, streams, and wetlands. Sewage ordinances may control where septic systems may be located. Property maintenance ordinances deal with the appearance and safety of the exterior portions of a property and may prohibit property owners from keeping junk or trash on their property or limit how tall grass and weeds may be allowed to grow.

FINDING AND READING LAND USE ORDINANCES

Now that you have been introduced to the different types of land use ordinances and why they are important, let's learn where to find them and how to read them! Where to find your municipality's ordinances depends on the municipality. Many municipalities include a link to their ordinances on their website. Many also put them online using web-based services such as [eCode360](https://www.eCode360.com/)¹⁷ or [Municode](https://library.municode.com/)¹⁸. Often, the easiest way to find ordinances online is to do an internet search for "[municipality] zoning ordinance."

Not every municipality posts its ordinances online. If you cannot find your municipality's ordinances online, or if you simply prefer the feel of paper in your hands, contact your municipal office to find out how to get a copy.

For more information about how to read an ordinance, see Appendix B.

You Should Know

Many Pennsylvania municipalities share a name with a municipality in a different county or state. For example, Pennsylvania has sixteen Franklin Townships, a Franklin Borough, and a Franklin County. To make sure you are looking at your municipality's ordinances and not a similarly-named municipality's, it is best to include the county and state in any internet search.



¹⁷ <https://www.generalcode.com/library/#>

¹⁸ <https://library.municode.com/>

ORDINANCES ARE WHERE THE ACTION IS

SECTION 2

Hopefully by now you understand that land use ordinances are the focal point of local land use decision-making. However, residents often miss this. We are all busy people, and most of us don't think about land use in our municipalities until a developer proposes a major project that creates a lot of buzz. We jump into action when we hear that someone has applied to turn the farm field or woodland behind our house into a housing development or distribution center or our neighbors plan to convert their property into an Airbnb or a wedding venue. We want to make our voices heard during those decisions. There are ways to do this, and we will discuss them throughout the remainder of this guidebook.

However, the reality is that municipalities and residents have limited ability to significantly alter, control or prevent development once an **application** for a specific project is submitted. As discussed on page 10 above, municipal decision-makers' decisions as to where and how land use and development may occur are controlled by the ordinances in place when the proposal was submitted. If a proposal complies with existing ordinances, it almost always must be approved, even if it turns out that the community does not welcome the type or extent of development allowed under those existing ordinances.



This is why it is much more effective for municipalities and their residents to be proactive by ensuring that good land use ordinances—ordinances that designate suitable locations for various land uses and impose appropriate limitations on them—are in place before any particular land use or development is proposed. It is infinitely easier for a municipality to require landowners and developers to comply with good ordinances than to make up for bad ordinances by trying to deny individual projects or impose restrictions on them.

Ensuring that a municipality has “good” ordinances takes work. Ordinances may become outdated as a municipality develops and as new types of land use evolve. Land use ordinances today must address uses that were virtually nonexistent twenty years ago, like marijuana dispensaries, distribution centers, short-term rentals, and fracking wells. And some ordinances were just inadequate to begin with. Crafting good, up-to-date ordinances takes effort, and municipalities have limited resources. There is rarely time to undertake a systematic review of all a municipality's existing ordinances to make sure they “work” for the municipality, landowners, and other residents. Often, municipal officials do not realize problems with existing ordinances until a controversial development comes to town and the shortcomings are revealed through the approval process. At that point it is too late to draft a new ordinance to control the proposal on the table.

This brings us to a powerful, yet often overlooked, way that residents can significantly influence future land development: Encouraging planning commissions and governing bodies to review and update land use ordinances that are not serving the needs of the community.¹⁹ Below are some tips for doing this.

¹⁹ “It goes without saying that any citizens may petition their elected representatives to take legislative action.” *Springwood Dev. Partners., L.P. v. Bd. of Supervisors of N. Cornwall Twp.*, 985 A.2d 298, 304 (Pa. Cmwlth. 2009).

Proposing Ordinance Amendments

Although there is a formal process a municipality must follow to adopt an ordinance (see page 49), there is no formal process that dictates how and when residents may suggest ordinance changes. PennFuture recommends attending a meeting of the planning commission to make suggestions during the public comment period.

TIPS FOR PROPOSING ORDINANCE AMENDMENTS:

- Review the existing ordinances and identify areas for improvement. It is best to focus on one of two things 1) a specific zoning district; or 2) a specific type of use. In deciding where to focus, consider areas of the municipality or types of uses that most interest you, uses that are likely to become prevalent in the near future, or uses that have the highest potential to cause detrimental impacts if not regulated properly.
- If your focus is on a specific zoning district, consider whether the existing ordinance appropriately and adequately addresses the following aspects in terms of potential impacts to the community and the environment:
 - the location and boundaries of the zoning district;
 - the uses allowed in the zoning district;
 - the type of review required for each use;
 - the lot size required;
 - the allowable size and height of structures; and
 - setbacks and buffers between structures and property lines.

continued on next page



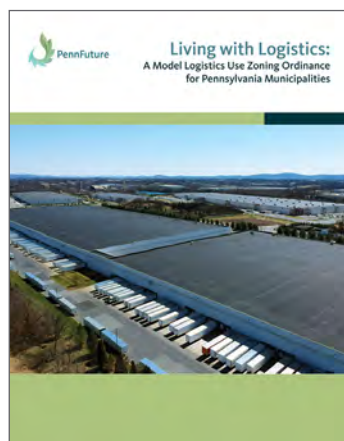
TIPS FOR PROPOSING ORDINANCE AMENDMENTS, CONT.

- If your focus is on a specific use, consider whether the existing ordinance appropriately and adequately addresses the following aspects:
 - How the use is defined.
 - If there is no existing definition for the specific use, should one be created or can the use be considered a subset of an existing use (e.g., should “marijuana dispensary” be a separate use or considered under the umbrella of “retail store?”)
 - If there is a definition, does it effectively distinguish the use from other uses or is there potential for confusion?
 - The zoning districts where the use is permitted;
 - The type of review required for the use in each zoning district where it is permitted;
 - Restrictions applicable specifically to the use. Are there any? Are they adequate to address the likely impacts of the use? What new restrictions may be appropriate?
- If you identify areas where the existing ordinance is falling short, bring your concerns to the planning commission or governing body. There are many ways to approach this, ranging from a short comment to a coordinated presentation with visual aids. If the existing ordinance does not address a certain land use, you may simply draw the decision-making body’s attention to this fact and request that they consider drafting a new ordinance.
- It is important to understand that, in Pennsylvania, a municipality generally cannot totally exclude or “zone out” any legitimate land use. An ordinance that does this is called exclusionary and is unconstitutional. Therefore, while it may be appropriate to suggest that certain uses be restricted to certain zoning districts, it is not helpful to suggest that a municipality completely eliminate a use from within its borders, as the municipality will not be able to do this.
- Remember that ordinances must apply broadly to entire zoning districts or categories of land uses. The municipality generally cannot make changes that affect only one property. This is called spot zoning and is not allowed. Therefore, avoid suggesting changes that are hyper-focused on a single area.
- Remember that land use ordinances are limited in scope (see page 8). Certain things cannot be controlled through land use ordinances, such as business practices and land ownership.



Model Ordinances

One of the best ways residents can help municipal officials improve their ordinances is by encouraging them to consider **model ordinances**. Model ordinances are example ordinances that provide suggested language that individual municipalities can adopt as written or can modify to fit their own needs. They typically address specific topics such as solar arrays, logistics uses, or lighting, and may be created by nonprofit organizations, educational institutions, state, county or regional planning agencies, or other groups. Municipalities can adopt aspects of the model that suit them and leave out those that don't. They can also modify the suggested provisions.



Model ordinances are helpful for several reasons:

- They lessen the burden on municipal officials. Rather than drafting an ordinance from scratch, a municipality can consider pre-drafted language.
- They are usually drafted by people with expertise in drafting ordinances and/or within the relevant industry. These people likely have a good understanding of how to best achieve desired outcomes through land use regulation and how to avoid common pitfalls.
- They may alert municipalities to issues or concerns that they otherwise would not have considered.
- If adopted by a number of municipalities, they can provide consistency for developers who develop similar projects in several municipalities.

For these reasons, we suggest that residents who wish to encourage their municipalities to improve their ordinances begin by searching for existing model ordinances on the topic of concern. PennFuture has created model ordinances for [logistics uses](#)²⁰ (i.e. warehouses and distribution centers) and [distributed solar systems](#).²¹

Other model ordinance resources include:

- [Widener University Commonwealth Law School model sustainability ordinances](#)²²
- [Penn State Extension Timber Harvesting Ordinance](#)²³
- [Dark Sky International Outdoor Lighting Ordinance](#)²⁴
- [PennDOT Electric Vehicle Supply Equipment Model Ordinance and Toolkit](#)²⁵
- [Pennsylvania DEP Model Wind Facility Ordinance and Toolkit](#)²⁶
- [American Planning Association Model Sign Ordinance](#)²⁷

²⁰ <https://www.pennfuture.org/Publication-Living-With-Logistics-A-Model-Logistics-Use-Zoning-Ordinance-for-Pennsylvania-Municipalities>

²¹ https://www.pennfuture.org/Files/Admin/SunSHOT_Guide.compressed.pdf

²² <https://widenerenvironment.com/students/ordinances/>

²³ <https://extension.psu.edu/dealing-with-local-timber-harvesting-ordinances>

²⁴ <https://darksky.org/resources/guides-and-how-tos/lighting-ordinances/>

²⁵ <https://www.penndot.pa.gov/ProjectAndPrograms/Planning/EVs/Pages/EV-Model-Ordinance-Toolkit.aspx>

²⁶ <https://www.dep.pa.gov/Business/Energy/Wind/Pages/default.aspx>

²⁷ <https://www.dep.pa.gov/Business/Energy/Wind/Pages/default.aspx>

RESOLUTIONS

If you have attended municipal meetings, you may have seen your local governing body pass a resolution. These often look similar to ordinances, but there are differences. Ordinances are generally-applicable laws that primarily consist of requirements that people in the municipality must abide by. Resolutions are formal declarations of a single, discrete action that the governing body itself will take and generally do not impose requirements on others. Among other things, a governing body may award contracts, set salaries for municipal employees, and create permit fee schedules by resolution.

THE COMPREHENSIVE PLAN



There is another document that you may have heard discussed in a land use context—the comprehensive plan. A comprehensive plan is a document consisting of maps, charts, and text that constitutes a statement of a municipality’s vision concerning its future development. Comprehensive plans describe where land development and infrastructure should occur in the future to allow for population growth while also protecting the environment, agricultural resources, historical resources, and the existing character of the community.

A municipality may draft its own comprehensive plan, or it may join with other neighboring municipalities to create a multi-municipal comprehensive plan. A multi-municipal comprehensive plan contains the same type of material as a municipal comprehensive plan, only at a larger scale that takes into account the development objectives of all the participating municipalities. In addition, counties must have comprehensive plans that cover the entire county. Multiple counties may also work together to create regional comprehensive plans. For example, the Lehigh Valley (Lehigh and Northampton Counties) has a comprehensive plan for the entire region.

It is important to understand that *comprehensive plans are not laws*. Comprehensive plans are visionary, aspirational documents that guide municipal leaders when they draft and enact land use ordinances. They do not contain requirements that individual landowners or developers must satisfy. A decision-making body cannot deny a land use proposal simply because it is inconsistent with a comprehensive plan. Only ordinances are legally binding.

You Should Know

Some ordinances may refer to “consistency with the comprehensive plan” as an overriding purpose of the ordinance or as a goal for individual development projects. However, this does not change the fact that an inconsistency with a comprehensive plan cannot serve as the basis for denial of an individual application.

UNDERSTANDING LAND USE DECISIONS AND LOCAL DECISION-MAKING BODIES

LAND USE DECISIONS

Now that you are familiar with land use ordinances and how to understand them, the next important step is to learn the types of land use decisions that municipalities make and who makes them. People often think every local meeting or hearing where a proposed development or issue is discussed will result in a final “yes” or “no” decision about whether that project can be constructed. In reality, municipalities make many different types of land use decisions. Each has a different purpose, and there are several municipal decision-making bodies who may make them. Some land use proposals require multiple decisions at different steps along the path to final approval, and a “yes” at one stage does not necessarily mean a final “yes” to the project.

We will discuss several of these types of decisions and how to participate in the decision-making process in greater detail later on. For now, a quick overview is helpful.

Myth vs. Reality

Myth: Every time a municipality holds a meeting to discuss a proposed land use or development, the municipality will make a final decision about whether that development will be allowed or not.

Reality: Most proposed development requires multiple approvals. Some meetings or hearings may address only one aspect of the approval process and do not result in a final decision about whether the proposal can be built.

SECTION 3

Types of Land Use Decisions

Ordinance adoption/amendment. This is when a municipality decides to pass a new ordinance or to make changes to an existing ordinance. Ordinance amendments may change only a word or sentence in the existing ordinance or may completely overhaul large parts of it. This process is *not* a decision about a specific land development proposal. See page 49 for more information about ordinance adoption and amendments.

Conditional use. Most zoning ordinances identify certain land uses as conditional uses. Unlike **permitted uses** (also called “by right uses” or “uses permitted by right”), which can be approved by the **zoning officer**, conditional uses must be approved by the governing body. Conditional uses are usually uses that have the potential to create significant community impacts, for example, hospitals, shopping malls, junkyards, bus stations, amusement parks, and distribution centers. Some uses may be permitted uses in some zoning districts and conditional uses in others. If a person proposes to develop a conditional use, the municipality must hold a **public hearing** to determine whether that use is appropriate at the proposed location, based on the criteria in the zoning ordinance. A conditional use hearing focuses on the use of the land, not the particulars of the building design or construction, which are addressed at the subdivision and land development stage. See page 52 for more information about conditional uses.



Special exception. Special exception uses are effectively the same as conditional uses. The only difference is that conditional use applications are decided by the governing body of a municipality, while special exception applications are decided by the ZHB. See page 52 for more information about special exceptions.

Subdivision and land development.²⁸ The subdivision and land development approval process concerns the particulars of design and construction of buildings and other structures. It is governed by the municipality's SALDO and addresses things like the locations of buildings and streets on the site, whether a proposed development contains enough parking, whether sewage treatment and stormwater management facilities are sufficient, and the design of lighting and landscaping. Most development, except individual single-family homes, must go through the subdivision and land development approval process. Conditional uses and special exception uses usually must go through both conditional use or special exception approval and the subdivision and land development process. Subdivision and land development is often referred to as simply "land development," especially if there is no subdivision of property involved. See page 61 for more information about subdivision and land development.

Planned residential development. A planned residential development ("PRD") is a special kind of land development where a single developer develops a large area of land for a number of dwelling units or a combination of residential and non-residential uses. A PRD is the official term for what is commonly referred to as a housing "subdivision" or "development." When a developer proposes a planned residential development, the municipality will hold a single hearing to decide all zoning and land development matters for that development. This is different from other types of development, where zoning and land development matters are addressed in separate proceedings. See page 68 for more information about PRDs.



<https://eastwickfriends.wordpress.com/meetings/>

Variance. A variance allows an applicant to be excused from complying with a specific provision of a zoning ordinance if certain requirements are met. If an applicant requests a variance, the ZHB will hold a hearing to determine if this is the case. See page 57 for more information about variances.

Appeal of zoning officer's decision. The zoning officer is an employee of the municipality whose primary role is to issue zoning permits and to issue citations to people who violate the zoning ordinance. In some cases, people disagree with the zoning officer's decision. When that happens, the ZHB will hold a hearing to determine if the zoning officer's decision is correct. See page 66 for more information about appeals from zoning officers' decisions.

Substantive validity/curative amendment challenge. This occurs when a person, most often a landowner or developer, claims that a land use ordinance is unconstitutional or invalid for some other reason. While the focus of a substantive validity challenge is the ordinance itself, not the proposed land use, it is often necessary to discuss the proposed land use to determine whether the ordinance is invalid. The most common type of substantive validity challenge is an exclusionary challenge. See page 71 for more information about substantive validity and curative amendment challenges.

²⁸ Subdivision refers to dividing or combining lots, tracts or parcels of land or changing lot lines. Land development generally refers to building structures or making other changes to the land (e.g., by engaging in farming or mining). 53 P.S. § 10107. Although these are technically separate activities, they are generally considered together, and approval process for both is the same.

GETTING TO KNOW YOUR LOCAL DECISION-MAKING BODIES

In order to effectively participate in local land use proceedings, it is vital to understand the different individuals and groups of people who make land use decisions. So, let's get to know your local government!

The Governing Body

The governing body is the group of elected officials that is responsible for governing the municipality. What the governing body is called depends on the type of municipality. In cities, the governing body is called the city council. In boroughs, it is called the borough council. In townships, the governing body is called the board of supervisors or board of commissioners.²⁹

The governing body has many responsibilities, including passing ordinances, managing the municipality's finances, and hiring and supervising municipal employees. The governing body also has several roles related to land use decision-making, as shown in the chart below:

| The governing body DOES . . . | The governing body does NOT . . . |
|---|---|
| <p>Adopt and amend land use ordinances</p> <p>Adopt and amend a comprehensive plan, either for the individual municipality or collectively with neighboring municipalities</p> <p>Appoint the planning commission, ZHB and environmental advisory council</p> <p>Approve and deny conditional use applications, subdivision and land development applications and planned residential development (PRD) applications.</p> | <p>Hold hearings on, approve, or deny applications for special exception approval, variances, appeals from decisions of the zoning officer, or any other matters over which the ZHB has jurisdiction.</p> |



²⁹ First class townships are townships that have a population density of more than 300 persons per square mile. All other townships are second class townships. 53 P.S. § 55205.1.

The Planning Commission

The planning commission is a group of volunteers appointed by the governing body to advise it in matters relating to land use and development. About two-thirds of Pennsylvania municipalities have a planning commission.³⁰ Some larger municipalities have a planning department made up of full-time staff employed by the municipality. Other municipalities may have a planning committee made up of members of the governing body instead of a separate body. Where a municipality has a planning department or planning committee, their duties are similar to the planning commission's duties. The MPC gives municipalities some leeway as to the powers and duties that may be delegated to these bodies, and local ordinances will specify exactly what those powers and duties are in each municipality. In addition, most counties have a planning commission, which performs a similar role as a municipal planning commission at the county level.

Except in the rare cases where a governing body has given it the authority to do so, the planning commission does *not* make final decisions on any matter. Its role is to collect and review information and make recommendations to the governing body so that the governing body can make informed decisions.



| The planning commission DOES . . . | The planning commission does NOT . . . |
|---|--|
| <ul style="list-style-type: none"> Prepare and present the comprehensive plan and land use ordinances to the governing body Conduct periodic review of land use ordinances and recommend amendments as needed Review conditional use applications and subdivision and land development applications and make recommendations to the governing body as to whether the application should be approved or denied Review the municipality's official sewage facilities plan Prepare and present to the governing body studies, surveys and plans which may assist in the overall planning for land use in the municipality, e.g., environmental studies, water surveys and studies regarding the feasibility and practicability of using renewable energy sources within the municipality Hold public meetings May present testimony before the governing body or ZHB in matters over which those bodies have jurisdiction | <ul style="list-style-type: none"> Make the final decision as to whether to adopt or amend any ordinance or comprehensive plan Make the final decisions as to whether to approve or deny any land use application Conduct hearings with witnesses, testimony, and evidence. |

³⁰ Pennsylvania Land Trust Association, LOCAL LAND USE PLANNING AND CONTROLS IN PENNSYLVANIA 2 (2019).

The Environmental Advisory Council

An environmental advisory council (“EAC”) is an advisory body similar to a planning commission. The EAC consists of members appointed by the governing body and exists to advise the governing body and other local governmental agencies on matters dealing with protection, conservation, management, promotion, and use of natural resources, including air, land and water.³¹ The precise scope of the EAC’s responsibilities in a given municipality is usually set out in the ordinance creating the EAC. Any municipality may create an EAC, but not every municipality has chosen to do so.

| The EAC MAY . . . | The EAC does NOT . . . |
|--|---|
| <ul style="list-style-type: none"> Identify environmental problems in the municipality and recommend solutions to the governing body or other local agencies Keep an index of open areas in the municipality for the purpose of obtaining information on the proper use of those areas Make recommendations as to the possible use of open space in the municipality; Promote a community environmental program; Advise the appropriate local agencies in matters relating to the purchase of property. | <ul style="list-style-type: none"> Make final decisions on any action Conduct hearings with witnesses, testimony, and evidence. |

The Zoning Hearing Board

The ZHB is a body appointed by the governing body to conduct hearings and render decisions on certain land use matters. The ZHB is a separate body that operates independently from the governing body. Unlike a planning commission or EAC, the ZHB has power to make final decisions on certain land use matters.

| The ZHB DECIDES . . . | The ZHB does NOT . . . |
|---|--|
| <ul style="list-style-type: none"> Applications for zoning variances Applications for special exception approval Appeals from determinations of the zoning officer, including the granting or denial of any permit and enforcement notices; Challenges to the validity of a zoning ordinance. | <ul style="list-style-type: none"> Consider or make decisions on applications for subdivision or land use approval Consider or make decisions on applications for conditional uses Write, enact, or amend ordinances. |

³¹ 53 Pa. C.S. § 2322.

The Zoning Officer

The zoning officer is an individual or business entity appointed by the governing body to interpret and administer the zoning ordinance on a day-to-day basis. The zoning officer issues zoning permits for construction and for changes in use when conditional use or special exception approval is not required, so long as the use and construction conform with the zoning ordinance. In some municipalities, the same person serves as the zoning officer and building code official, who is the municipal employee responsible for interpreting and administering the building code.

| The zoning officer DOES . . . | The zoning officer CANNOT. . . |
|--|--|
| <p>Issue permits for construction and changes to uses that conform to the zoning ordinance and do not require conditional use or special exception approval</p> <p>Identify and register nonconforming uses</p> <p>Issue enforcement notices (“notices of violation”) to landowners who violate the zoning ordinance</p> <p>Institute court proceedings if violations continue after the enforcement notice</p> <p>May testify in an enforcement hearing or other land use matter</p> | <p>Issue a zoning permit for a use that does not comply with the zoning ordinance</p> <p>Grant variances from the zoning ordinance</p> <p>Consider, grant, or deny applications for conditional use or special exception approval or subdivision and land development applications</p> |



PUBLIC MEETINGS AND HEARINGS

Now that you have a general idea of the types of land use decisions and who may be making them, you are well on your way to effectively participating in the process! Next, we will discuss how to find out about meetings and hearings, how they are conducted, and the various participants you may see there. We will start with the difference between a public *meeting* and a public *hearing*. Many people, even municipal officials and attorneys, use these words interchangeably, but they are not exactly the same thing. Understanding the difference will help you understand your options for participating in each type of proceeding.

You Should Know

The MPC sometimes refers to proceeding as hearings even when they do not have the quasi-judicial characteristics described here. For purposes of this guidebook, we draw the distinction between meetings and hearings based on the type of process the MPC requires, not the term the MPC uses.

SECTION 4

Public Meetings

In legal terms, a meeting is any gathering of an **agency** that is attended by a quorum of its members and held for the purpose of deliberating agency business or taking “official action.” In this context, official action includes nearly all actions by decision-making bodies discussed in this guidebook, including deciding whether to grant or deny conditional use, special exception, variance and subdivision and land development applications, enacting ordinances, and making recommendations.³²

The **Pennsylvania Sunshine Act** (also known as the Open Meetings Law) requires that all agency meetings be open to the public. It also gives the public certain rights to participate in these meetings.³³ This includes the right to comment on matters of concern and to record the proceedings, so long as both are done in accordance with reasonable rules and regulations for maintaining order during the meeting.³⁴ For more information about the Sunshine Act, visit the [Office of Open Records \(OOR\) website](https://www.openrecords.pa.gov/SunshineAct.cfm).³⁵

Hearings

A hearing is a more formal proceeding. It is similar to a trial, with the decision-making body acting as the “judge.” The purpose of a hearing is for the decision-making body to gather evidence so it can make an informed decision about the matter it must decide. Decision-making bodies hold hearings before making certain types of land use decisions, such as whether to approve an application for conditional use approval or a variance request.

At a hearing, the applicant will present evidence with the purpose of showing the decision-making body and the public that it has satisfied all the relevant requirements in the ordinance. The evidence can be in the form of **exhibits** such as plans, photographs, traffic studies, and environmental studies and/or sworn testimony by **witnesses** such as land developers, engineers, or architects. The applicant’s presentation of evidence may look similar to a developer’s presentation of a proposed land development at

Legal Term Alert!

Hearings conducted by local decision-making bodies are referred to as “quasi-judicial proceedings” because they are similar to court proceedings but are not presided over by a judge.

³² 65 Pa. C.S. § 703.

³³ 65 Pa. C.S. § 704.

³⁴ 65 Pa. C.S. §§ 710, 710.1.

³⁵ <https://www.openrecords.pa.gov/SunshineAct.cfm>

a meeting, but hearings involve a more formal question-and-answer format called examination of the witnesses and presentation of exhibits. Other parties such as neighboring landowners may also question (**cross-examine**) the applicant's witnesses and/or present their own witnesses and exhibits. The applicant and/or other parties may be represented by an attorney, who may question witnesses on behalf of their client. A court reporter will be present to swear in witnesses and transcribe the hearing. For complex matters, a hearing may take more than one day, spread over several months. After the hearing concludes, the decision-making body will publicly vote on its decision. Later, it will issue a written decision explaining why it decided the way it did. Only evidence formally presented at the hearing will be considered in the decision.

The MPC requires a public hearing for all matters before a ZHB, including variance applications, special exception applications, appeals from determinations of the zoning officer, and substantive validity challenges to zoning ordinances.³⁶ The MPC also requires hearings on applications for conditional use approval³⁷ and curative amendment applications.³⁸ By contrast, unless it is required by local ordinance, the governing body is not required to hold hearings on subdivision and land use applications.³⁹ These decisions typically occur at a regular meeting of the governing body.

| | Public Meeting | Hearing |
|--|--|--|
| Witness testimony given under oath | No, although the applicant or the applicant's representatives may make an informal presentation of a proposed project. | Yes |
| Presentation of exhibits | No although the applicant may include plans or other documents in its presentation of a proposed project. | Yes |
| Members of the public may become parties to the proceeding | No | Yes, if they meet certain requirements. |
| Parties entitled to question applicant's representatives | No. Representatives may agree to answer questions from the public but are not required to. | Yes |
| Public entitled to present witnesses and exhibits | No | Yes, but only persons who are given party status. |
| Public entitled to make comment | Yes | Yes |
| Proceeding transcribed by court reporter | No | Yes |

Hearings are also technically a meeting for purposes of the Sunshine Act. Therefore, they are open to the public, and members of the public are entitled to comment as in any other public meeting. At a hearing, the public comment period is separate from the presentation of evidence.

³⁶ 53 P.S. §§ 10909.1(a), 10908.

³⁷ 53 P.S. §10913.2

³⁸ 53 P.S. §10609.1(b). Note that these hearings are held before the governing body and not the ZHB.

³⁹ 53 P.S. § 10508(5); *E. Consolidation & Distribution Servs. v. Hampden Twp. Bd. of Comm'rs*, 701 A.2d 621, 624 (Pa. Cmwlth. 1997)

Executive Sessions

There are some types of discussions that the Sunshine Law allows agencies to have in private, outside of the view of the public. This is called an **executive session** or closed meeting. The matters a decision-making body may discuss in an executive session are typically those where there is a risk that public discussion could violate a person's privacy, reveal the agency's legal strategy to an adverse party, or cause a public safety concern. For example, an agency may hold an executive session to discuss personnel matters, to consult with an attorney about active or pending litigation, or discuss public safety issues if disclosure of the information discussed would be reasonably likely to jeopardize public safety.⁴⁰ The decision-making bodies discussed in this guidebook are also permitted to hold executive sessions to deliberate with one another before making land use decisions.⁴¹ The Pennsylvania Supreme Court has decided that private discussion between members of a decision-making body is appropriate in this context because it serves the public interest for them to be able to “freely exchange ideas and opinions without being forced to operate in a fishbowl.”⁴² An agency that holds an executive session for any reason must announce at a public meeting the specific reason for the executive session and must reconvene at a public meeting to take any official action, such as a vote to grant or deny a land use application.

HOW TO FIND OUT ABOUT PUBLIC MEETINGS AND HEARINGS

Let's start by talking about how you should NOT expect to find out about upcoming land use meetings and hearings. Although it would be nice, municipalities are rarely required to give residents direct, personal notice of an upcoming land use decision that may affect them. This means that you generally cannot expect to receive a letter or phone call about changes to the use or development of nearby properties, no matter how significant. There are some exceptions to this rule. If a municipality proposes to rezone an area, it must mail notice to the property owners within the area to be rezoned (but not adjoining areas). Local zoning ordinances and SALDOs may also contain additional requirements. For instance, it is not unusual for a zoning ordinance to require the municipality to notify owners of contiguous properties or properties within a certain distance of a property that is the subject of an upcoming ZHB hearing.

However, this leaves many land use meetings and hearings that may occur without direct personal notice to affected residents. This includes conditional use and special exception hearings, meetings to consider subdivision and land development applications, and notice of pending zoning ordinance amendments. Therefore, to stay informed, it is important to know where to look for public notices.

The “Newspaper of General Circulation”

Let's face it: sometimes it takes a while for the law to catch up with the times. One example of this is the rules for notifying the public of municipal meetings and hearings, known as public notice requirements. Even though the internet is probably the quickest and most effective way to make information widely available to the public, the law does not require municipalities to give notice of public meetings and hearings online, even if the municipality has a website. What the law does require is for municipalities to publish notice of meetings and hearings in a **newspaper of general circulation** within the municipality. As long as the chosen newspaper meets the requirements in the MPC, it need not be the most prom-



⁴⁰ 65 Pa. C.S. § 708.

⁴¹ *Baribault v. Zoning Hearing Bd. of Haverford*, 236 A.3d 112, 120 (Pa. Cmwlth. 2020).

⁴² *Id.*

inent or widely circulated newspaper in an area, and not all municipalities in the same area need choose the same paper. You may have to contact your municipality to find out where its legal notices are published. This is not to say that municipalities do not post information about upcoming meetings and hearings online as well, but many municipalities still rely solely on newspaper publication to get the word out.

Notices are usually printed in a section of the paper called “legal notices” or “legals.” They may be found in the print version of the newspaper, online, or both. In addition to notices of upcoming public meetings, this section may include notices related to estates (wills), sheriff’s sales, public auctions, and business name registrations. New notices are printed in every issue of the newspaper.

Notices are typically published between 7 and 30 days before a meeting or hearing. Some types of notices must be published more than once. You may see notice of:

- Amendments to land use ordinances that the governing body is considering adopting at an upcoming meeting;
- Hearings before the ZHB, including applications for variances, appeals from determinations of the zoning officer, and special exceptions;
- Hearings before a governing body, such as applications for conditional use or planned residential development approval;
- Changes to a municipality’s regular business meeting schedule.

Here is an example of a public notice published in a newspaper:

PUBLIC NOTICE

PARADISE TOWNSHIP BOARD OF SUPERVISORS SPECIAL MEETING

The Paradise Township Board of Supervisors has scheduled a **SPECIAL MEETING** for Thursday, April 27, 2023, at 6 p.m. The purpose of the Special Meeting is consideration of the application of JSPA Realty, LLC for a Conditional Use Approval for a Master Development Plan in the Resort Development Overlay District in accordance with Section 160-11(43.B) of the Township’s Zoning Ordinance and any other business that comes before the Board. The Public Hearing will be held to a three-hour time limit. All meetings are open to the public. Any member of the public who wishes to participate virtually may log in via Zoom: <https://zoom.us/j/94054919169?pwd=TzNQMVloSU1nZEloOeGJyUG1UWlhWQTo9> or go to the website Paradisetownship.com for more information.

Regularly Scheduled Meetings

Most municipal governing bodies are required to hold public meetings at least once a month to conduct general business. These meetings are typically called general meetings or just “regular meetings.” The meetings may include discussion of budget, paying bills, hiring employees, upcoming events, and reports from law enforcement and EMS providers about recent activity. In addition, the governing body may hold public **work sessions** to conduct more in-depth discussion of certain matters before voting on them at the general business meeting. Planning commissions and EACs also typically schedule monthly meetings, although meetings of these bodies may be canceled if there is no business to be discussed in a particular month.

A municipality’s general business meeting generally occurs at the same time every month. For example, a municipality may hold its regular business meeting every second Monday or every first and third Thursday. If you want to participate in land use decision-making in your municipality, knowing the schedule for regular meetings is important. This is because decisions on applications for subdivision and land development approval often occur at a governing body’s regular business meeting, and no separate notice is published. Important discussions also happen at work sessions, planning commission, and EAC meetings.

Like other types of land use meetings and hearings, the governing body’s schedule for regular meetings and work sessions must be published in a newspaper of general circulation.⁴³ However, municipalities are only required to publish the notice once, at the beginning of each year, not for each individual meeting. It might be easy to miss this annual notice in the newspaper, but do not despair! Most municipalities that have a website post the regular meeting schedule on the website. You can also learn the regular meeting schedule by calling or visiting the municipal office.

Agendas

You may be wondering, “Do I have to go to EVERY regular meeting of the governing body, planning commission or EAC just in case an important land use matter is discussed?!” Thankfully, no, you can find out what will be discussed at the meeting ahead of time by obtaining the meeting **agenda**. The Sunshine Act requires municipalities to post meeting agendas at the municipal office and at the place where the meeting is to be held at least 24 hours before the meeting.⁴⁴ In addition, any municipality that has a website must post meeting agendas on its website at least 24 hours before the meeting.⁴⁵ Agendas must also be made available at the meeting.⁴⁶

Physical Posting

In some limited instances, notice of an upcoming land use meeting or hearing may be posted on the affected property. Unless a local ordinance provides otherwise, this is limited to notice of ZHB hearings and proposed zoning ordinance amendments that will affect a property.⁴⁷ Municipalities are *not* required to post notice on a property that is the subject of an upcoming conditional use hearing, special exception hearing, or subdivision and land development approval application.



https://www.tribdem.com/news/judge-schedules-arguments-in-legal-case-on-asphalt-plant-plans/article_7fac4e02-5f76-med-bd86-a368766b1e90.html

⁴³ 65 Pa. C.S. § 709.

⁴⁴ 65 Pa. C.S. § 709(c.1)(1)(ii).

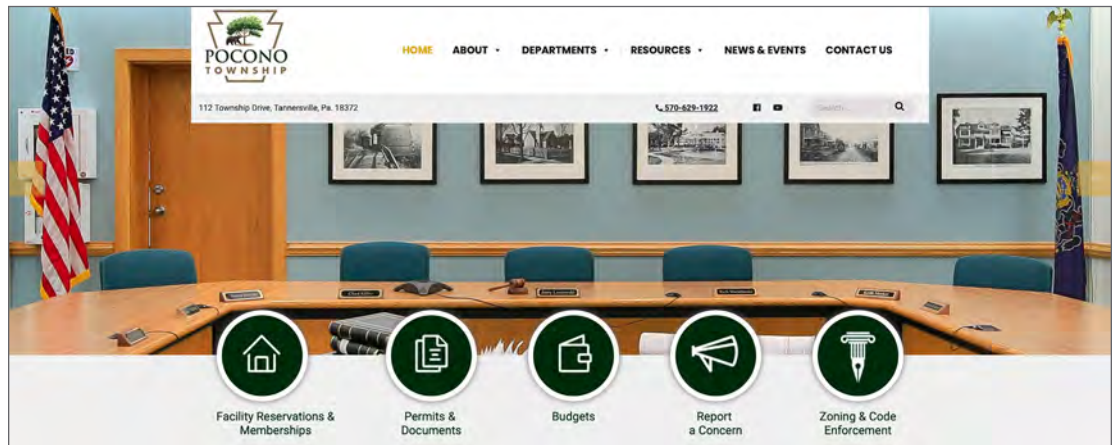
⁴⁵ 65 Pa. C.S. § 709(c.1)(1)(i).

⁴⁶ 65 Pa. C.S. § 709(c.1)(1)(iii).

⁴⁷ 53 P.S. §§ 10609(b)(1), 10908(1)

Other ways of finding out about upcoming decisions

Many municipalities post information about upcoming meetings, hearings, and events on the municipality's website or Facebook page. Each website is different, so if your municipality has one, spend some time familiarizing yourself with it to learn where you can find information. Local citizens' groups on social media platforms such as Facebook may also alert residents to significant land use matters that are happening in the municipality. However, be cautious that citizens' Facebook groups are not official communications from the municipality, and the information posted in them may not always be accurate. It is best to verify with the municipality any information from a Facebook page that you are relying on.



In addition, some municipalities use smartphone apps as an additional way to notify the public of things like upcoming meetings, municipal office hours, road closures, trash pickup schedules, safety issues and special events. Some municipalities use an automated text message service for a similar purpose. Check your municipality's website or contact the municipal office to find out if it is using services like these.

Finally, don't be afraid to attend a meeting of your governing body or planning commission and simply ask for an update on pending land use matters!

What if I miss a meeting?

Let's be real: not everyone is able to attend every meeting. But not to worry, there are ways to find out what happened at a meeting or hearing after the fact. The best way to get this information depends on whether the event in question was a meeting or a hearing. The Sunshine Act requires municipal bodies to keep written **minutes** of public meetings like regular business meetings of the governing body, the planning commission or the EAC. Typically, the members of the decision-making body will review the minutes of the previous meeting and formally approve them at its next meeting. After that, the minutes will be available to the public. Although it is not required, many municipalities make the minutes of public meetings available on their websites. Otherwise, you can contact the municipal office to learn how to get a copy.

Because hearings before the ZHB and conditional use hearings are quasi-judicial proceedings, they are transcribed by a court reporter and there are no minutes taken. **Transcripts** are the property of the court reporter and can be obtained from the court reporter for a fee. The municipality cannot give out copies of transcripts because they are the property of the court reporter. However, if the municipality has a copy of a transcript, it may allow you to view it in the municipal office. If you want your own copy of a transcript, you may need to contact the municipal office to find out how to contact the court reporter.

WHO'S WHO AT A PUBLIC MEETING OR HEARING

Many municipal meetings and hearings come with a large cast of characters. Depending on the type of public meeting or hearing, they may include:

The decision-making body. This may be the governing body, the ZHB, the planning commission or the EAC. The decision-making body's role is to consider all the relevant information presented at the meeting or hearing and make a decision. The decision-making body normally sits at a table in the front of the room, facing the public. The **chair** of the decision-making body is the member of the body who runs the meeting or hearing.

Solicitor. The **solicitor** is an attorney who advises the decision-making body. The solicitor's roles at a hearing or meeting are to help make sure that the meeting or hearing proceeds according to the law and to give the decision-making body legal advice if needed. Solicitors typically take a more active role in hearings than in public meetings. For example, at a hearing, the solicitor may make introductory comments about how the hearing will be run and direct the participants when to speak and what they can and cannot say. The solicitor typically sits at the table with the decision-making body or to the side at a separate table. The same person usually serves as the solicitor for the governing body and the planning commission, but the ZHB will have a different solicitor.

Other municipal officials or staff/employees. Other elected officials or employees of the municipality may be present at a meeting or hearing. They may include:

- The municipal secretary. The secretary is usually responsible for taking notes and preparing minutes of a public meeting.
- The manager. The manager is the person responsible for the day-to-day operation of the municipality.
- The zoning officer.
- The municipal engineer. Engineers are municipal **consultants** who advise the governing body on matters such as the design of roads, sewers, bridges, culverts and other engineering work, and on individual land use proposals.
- The mayor (if the municipality has one).
- Representatives of municipal police, fire, and EMS services. These people often report on the activities of the group during the meeting.

Court reporter. Court reporters, also known as stenographers, are only present at hearings. The court reporter's role is to transcribe the hearing using a stenotype machine (which looks like a very small keyboard) or another device. After the hearing, the court reporter will produce a transcript. The court reporter may also administer the oath to ("swear in") witnesses at the hearing.

Applicant. The **applicant** is the person or business entity requesting approval or some other decision from the decision-making body. The applicant, or someone representing them, will likely attend the meeting or hearing to present evidence and/or explain why they believe they are entitled to approval.

Applicant's attorney. Applicants are more likely to have an attorney at a hearing than at a meeting. At a hearing, the applicant's attorney's role is to present the applicant's case. This may include making an opening statement describing the application, examining the witnesses the applicant chooses



<https://www.houstonpublicmedia.org/articles/news/houston/2023/11/08/468922/houston-area-voters-ok-all-three-local-propositions/>

SECTION 4

Did you know?

In Pennsylvania, not all municipalities have a mayor. Only cities, boroughs, and some townships have mayors. City mayors typically have more powers than borough mayors.

to present, cross-examining witnesses presented by other parties, and objecting to conduct they believe is improper from other parties. An applicant's attorney may also attend at a meeting to present their client's land development application.

Representative of the municipality. In some cases, the municipality may choose to participate in a hearing as a party. For example, at a hearing before a ZHB, the municipal solicitor may present witnesses or exhibits on behalf of the governing body. In a hearing before the governing body, the municipality may appoint a different attorney, known as "special counsel" to present the municipality's position. This is because the municipal solicitor will be serving in an advisory role to the municipal body and cannot have both roles in the same proceeding.

Witnesses. Witnesses are people who testify at a hearing to facts or opinions that are relevant to the matter being decided. There are two types of witnesses:

Fact witnesses testify to facts relevant to the matter being decided. Fact witnesses must have personal knowledge of these facts but do not necessarily have any particular expertise. Fact witnesses may include a landowner, the applicant, the zoning officer, and others.

Expert witnesses are people who have specialized knowledge relevant to the matter being decided. Expert witnesses may include civil engineers, stormwater engineers, water and sewer engineers, traffic engineers and planners. Expert witnesses testify to technical matters that are outside the experience or knowledge of the average person.

Parties. A party, sometimes called an "interested party," is a formal participant in a hearing who has certain rights that other members of the public do not have. See page 35 for more information about the rights and role of parties.

Members of the public. Members of the public may attend, observe, record, and comment at any public meeting or hearing. The public's role is to draw the decision-making body's attention to matters of public interest or concern related to the application or other decision being made. Members of the public may express approval or disapproval of an application, proposed ordinance, or other action based on the decision's impact on the public. More information on how to make effective use of the opportunity to make public comment can be found on page 31.



PARTICIPATING IN PUBLIC MEETINGS AND HEARINGS

MAKING PUBLIC COMMENT

As we noted earlier, members of the public are entitled to attend, observe, and make comment at all public meetings and hearings, and local decision-making bodies must provide an opportunity for them to do so.⁴⁸ Typically, time is set aside for public comment at the beginning and/or end of each meeting and hearing. If there is not enough time for everyone who wishes to comment at a meeting, the decision-making body may defer the comment period to the next regular meeting or may schedule a special meeting just for public comment.⁴⁹ If a hearing is anticipated to last more than one day, the decision-making body may set aside part of each hearing date for public comment or may wait until the very end of the hearing.

You Should Know

The Sunshine Law gives municipalities the right to impose reasonable limitations on public comment as necessary to maintain order. These limitations may include limiting how much time each person has to speak (3 minutes is typical), requiring speakers to identify themselves, allowing only residents and taxpayers of the municipality to speak, and restricting or removing persons who are combative or disruptive.

TIPS FOR MAKING EFFECTIVE PUBLIC COMMENTS:⁵⁰

- Comments should be relevant to the matter being decided but need not be as closely tied to a **legal standard** as, say, a **brief** or witness testimony (see page 40 for more information about briefs). This is your opportunity to speak to decision-makers as politicians, not just the “quasi-judicial body,” to make them aware of issues that you are concerned about as a voter.
- It may be helpful to write out your comment ahead of time and bring an outline or notecards. Don’t be afraid to read your comments if you are not comfortable with public speaking.
- Comments should be concise and to the point and fit within the allotted time.
- Try not to repeat points other commenters have already made. If you agree with another commenter, say so, but avoid rehashing the same information at length. Try to think of something new to add.
- If you are aware of multiple people who feel the same way as you do, consider coordinating your comments or selecting a representative to make comments on behalf of the group.
- What’s the ask? If there is a specific action you want the decision-making body to take, make sure to mention it in your comment.

continued on next page



⁴⁸ 65 P.S. § 710.1(a).

⁴⁹ 65 P.S. § 710.1(a).

⁵⁰ For more tips and techniques, check out PennFuture’s webinar recording: [How to Effectively Engage in the Public Commenting Process](https://www.youtube.com/watch?v=MJQbNpEmkTQ), available at <https://www.youtube.com/watch?v=MJQbNpEmkTQ>.

TIPS FOR MAKING EFFECTIVE PUBLIC COMMENTS, CONT.

- You may ask questions during the public comment period. But be aware, while public officials may answer, *they are not required to*. Applicants and witnesses do not have a duty to answer questions either.
- Remain civil. You can be enthusiastic, forceful, and even angry when making public comments but avoid crossing the line into hostility. Decision-makers rarely respond positively to shouting, insults, or accusations.
- It's not a sporting event. Clapping, booing, hissing, and talking over other commenters or the decision-making body is inappropriate.
- Know that all voices matter. New residents and property owners have just as much say in how the municipality operates as people who have lived there for decades. Renters and business owners have a stake, just like property owners do. Longtime residents should not expect special treatment, and new residents should not feel that they have no say.
- Don't think that the only time to make public comment is when you disagree with the decision-making body. Consider also making comments in favor of actions by municipal bodies that you support! This kind of positive reinforcement can go a long way the next time the decision-making body is faced with a similar decision.
- If you are unable to attend a public meeting or are uncomfortable speaking in public, you may also submit written comments to the decision-making body via mail or email before the meeting or hearing. Typically, you can send such comments to the municipal office or general email address, and the municipal staff will deliver it to the decision-making body. Make sure to send comments far enough in advance of the meeting to allow the decision-making body time to receive and review them.



PARTICIPATING AS A PARTY IN PUBLIC HEARINGS

We mentioned earlier that certain people called parties have special rights in land use hearings. Let's talk more about those rights and when and how to take advantage of them.

Party Time!

Hearings (but not public meetings) offer the opportunity for people who meet certain qualifications to become parties. A party is a formal participant in the proceeding who has certain rights that other members of the public do not have. In deciding whether to request party status, you should consider whether you have the desire and ability to take advantage of those rights. Persons who only want to offer public comment need not become parties.

So, what are the special rights that parties have? While any member of the public may comment at a hearing or public meeting, parties are also entitled to:

- Be represented by an attorney;
- Cross-examine witnesses presented by the applicant or any other party;
- Present their own witnesses and exhibits;
- Make opening and closing argument;
- Submit a post-hearing brief, if allowed by the decision-making body;
- Receive all communications, reports and materials shared between the decision-making body and any other party or parties, including the applicant;
- Receive a copy of the decision-making body's written decision; and
- Appeal the decision of the decision-making body to the **Court of Common Pleas**.⁵¹

Becoming a Party

Decision-making bodies are technically permitted to allow any person or organization who makes a timely appearance to participate as a party to a hearing, but they rarely take such a wide-open approach. More often, decision-making bodies limit party participation to those persons who the MPC says they must allow to participate as parties. This includes only the municipality and any person who is "affected by the application" and makes a timely appearance before the decision-making body.⁵² There is no precise legal standard to determine when a person is "affected by the application." Neighbors and other persons who own or reside at property in the immediate vicinity of the **subject property** are almost always considered to be affected by the application. Whether other persons are similarly "affected by the application" must be decided on a case-by-case basis. Practically speaking, most decision-making bodies decide whether to grant party status based on how close the person lives to the subject property.

In addition to individuals, organizations and citizens' groups can also become parties. Decision-making bodies typically allow organizations and citizens' groups to become parties when at least one of their members is entitled to party status as an individual or if the application implicates the organization's mission or purpose.



<https://www.independent.co.uk/news/jewish-tennessee-athens-pulitzer-prize-nazis-b2013486.html>

⁵¹ 53 P.S. § 10908(5), (8), (9).

⁵² 53 P.S. § 10908(3); *Baker v. Zoning Hearing Bd.*, 367 A.2d 819, 822 (Pa. Cmwlth. 1976).

Seeking Party Status

The decision-making body will decide who may participate in a hearing as a party at the beginning of the hearing, generally after introductory comments by the decision-making body, the solicitor, and/or the applicant. The decision-making body may require people who wish to be considered parties to fill out a form with their contact information so they can receive communications later. The decision-making body or the applicant's attorney may ask questions of people who wish to become parties to determine how they will be affected by the application. If you intend to seek party status, you should be ready give a short statement of:

- where your property is located in relationship to the subject property,
- the nature of your ownership or use of the property is (e.g., whether you own or rent the property or whether you reside there or operate a business),
- how you anticipate being affected by the matter being decided in a way that goes beyond the impact to the general public.

You may also wish to seek party status for a citizens' group or other organization, whether formal or informal. If so, be prepared to give a short statement on the above with respect to at least one member of the organization. It may also help to identify the group or organization's purpose.

Keep in mind that decisions about party status are just the first stage of the hearing. The only thing at issue at this stage is whether people seeking party status may be affected by the application in a general sense. There will be time later to ask questions and make comments about the details of the proposal.

Cross-examining Witnesses

Let's say the decision-making body has granted your request to be a party to a hearing. One of the rights you now have is the right to cross-examine witnesses presented by the applicant or by other parties. Witnesses are persons who testify under oath at the hearing about facts or opinions related to the matter being decided. The number and type of witnesses varies greatly depending on the nature of the hearing and the scope of the application. A hearing on a request for a variance by the owner of a single residential lot may include only the landowner's testimony. A conditional use hearing for a

large mixed-use development may include testimony by the landowner, the developer, engineers, contractors, traffic experts, stormwater experts, and others who participated in the design of the project. The applicant presents their witnesses and other evidence first, and then the other parties are given an opportunity to ask questions of those witnesses about what they said or the evidence they submitted. This is called cross-examination.

How cross-examination works is this: the party who is presenting the witness begins by asking the witness questions, which the witness will answer. This is called **direct examination**. In nearly all hearings, the applicant will present their witnesses first, and the applicant's attorney will be the one conducting the direct examination. The party may also present exhibits during the witness's testimony and ask the witness questions about them. Once direct examination is over, other parties will have the opportunity to cross-examine the witness by asking their own questions. Generally speaking, the questions must be follow-up questions about the matters that the witness testified to or about evidence submitted during direct examination. This rule is not as strict at a land use hearing as it is in a trial, but the decision-making body, solicitor, or applicant's attorney may **object** to questions that are entirely unrelated to the witness's testimony on direct examination.



It may be difficult for you to find your own witnesses; therefore, you may only be able to get your points through cross-examination of the applicant's witnesses. And that's ok! You can still make a compelling case through cross-examination.

Objection!

If a party believes that another party is doing something is not permitted, they may object. If an objection is made, the party making the objection must state what the objection is, and the proceeding pauses while the decision-making body decides how to proceed. If the objection is "sustained," the party whose conduct was objected to must stop the conduct (e.g. discontinue the line of questioning that was objected to). If the objection is "overruled," the party may continue. A party may object during another party's cross-examination if the questions are irrelevant to the matter being decided, if the same questions have already been answered by the witness, if the questions are about matters that the witness didn't testify to during direct examination, or if the person asking the questions becomes too aggressive or combative.

TIPS FOR CROSS-EXAMINING WITNESSES:

- Prior to the hearing, think of questions you would like answered about the matter being decided. When you get to the hearing, you can decide which witness is best to answer the questions based on their testimony on direct examination.
- Pay attention and take notes during direct examination. Write down anything you would like the witness to clarify or provide more information about.
- Pay attention to the witness's area of expertise and ask questions related to that area. For example, if the witness is the applicant's architect, questions should be related to the building design and layout. If you have questions about wastewater treatment, they would be better left to a different witness, such as an engineer.
- Ask one question at a time and allow the witness to answer before asking another question.
- Remember that the purpose of cross-examination is to get information from the witness, not to argue or express your opinion. There will be time for that later. Think about cross-examination as an opportunity to get the facts you need to support your opinion.
- If you are unable to present your own witnesses and testimony, consider how best to question the witnesses on the issues you're most interested in. For example, can you use your questions to point out errors they've made or things they have failed to consider?
- Be respectful and courteous. It is fine to be assertive, ask difficult questions, and push a witness for a better response if you don't feel they have adequately answered.



Presenting Evidence

As a party, you also have the right to present your own evidence in the form of witnesses or exhibits. This will happen after the applicant has finished presenting their witnesses and evidence.

If you are able to obtain a witness or witnesses to present testimony and other evidence, this offers a great opportunity to introduce new evidence on issues important to you, fill in gaps that you believe the applicant's witness may have missed, or rebut evidence and testimony presented by the applicant's witnesses.

TIPS FOR INTRODUCING EVIDENCE ON DIRECT EXAMINATION:

- All evidence, whether witness testimony or documents, must be relevant to the matter being decided. In other words, the evidence must be something that will help the decision-making body make the decision it has to make. The fact sheets about each type of land use proceeding, starting on page 49, will help you learn what is and is not relevant at each type of hearing.
- Evidence is more persuasive when it is specific. For example, if the ZHB is deciding whether the zoning officer correctly cited a landowner for excessive accumulation of junk on their property, testimony that the property “is always a mess” is not as persuasive as testimony that there have been ten junked cars, three boats, a washing machine, and a pile of tires on the property for six months.
- Don't underestimate fact witnesses! Many things that are relevant to land use decisions do not require expert knowledge. For example, one thing that is relevant to a request for a variance is whether there are “unique physical circumstances or conditions peculiar to the property.” To help the decision-making body decide whether a variance is appropriate, a fact witness such as a neighbor could testify to their personal knowledge of the physical characteristics of the subject property and surrounding properties.
- Fact witness testimony can be strengthened by exhibits such as photographs, videos, and other documents. For example, our witness in the junkyard hearing above could strengthen their testimony with photographs of the cars, boats, washing machine, and tires they testified to.
- If you present a witness, you (or your attorney, if you have one), should be prepared to conduct direct examination of that witness (discussed above). To prepare questions, think of what you would like the witness to talk about and then create questions that will prompt those answers. Prepare your questions and run through them with the witness ahead of time, if possible. Write them down and bring them to the hearing. It is perfectly OK to read the questions off a sheet of paper (most attorneys do)! As with cross-examination, remember to ask one question at a time and allow the witness to answer before moving on to another question.
- Make sure any witness you plan to present will be available on the date of the hearing!
- If you plan to introduce exhibits, bring at least enough copies to give one to each member of the decision-making body, the witness, the applicant, the court reporter, and yourself. Have extras in case other participants want a copy as well. Ask the decision-making body how it would prefer you to present the exhibits.

No trespassing!

Be aware that gathering evidence is not an excuse to trespass or invade a person's privacy.

A Word on Expert Witnesses

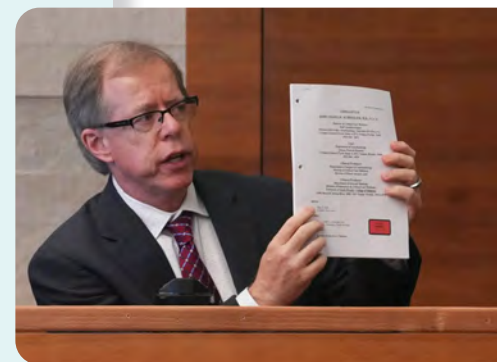
It is often difficult for individual community members and citizens' groups to present expert witnesses because their time is often expensive and limited. However, expert testimony and other evidence can often prove invaluable at a hearing.

Tip!

Look for experts in your community. Many community members have expertise as biologists, engineers, etc., and may be a viable option for an expert witness.

TIPS FOR PRESENTING EXPERT WITNESSES:

- Consider the aspects of the application that most concern you and seek an expert witness who can address those issues. For example, if you are concerned about a proposed land development's approach to sewage treatment, consider engaging a wastewater engineer. If you are concerned about traffic impacts, seek a traffic engineer.
- Seek expert witnesses as early as possible. They may need weeks or months to review the application, form an opinion, and provide comments. It will be difficult to secure an expert witness at the last minute, as these professionals are often very busy.
- Meet with the expert before they begin their work to discuss the scope of the work and payment. Decide whether they will be providing a written report (recommended, if possible) in addition to testimony at the hearing and what topics the report and/or testimony will and will not cover.
- At the hearing, be prepared to begin direct examination with evidence about the witness's qualifications as an expert. This type of evidence usually takes the form of the expert's *curriculum vitae* ("CV") or resume, combined with questions and answers on direct examination about their professional experience, a process called *voir dire* (pronounced vwa-DEER). You may ask questions about the witness's educational background, their job title, how long they have been working in that field, what their work entails, and any licenses or certifications they may hold. If possible, meet with the expert witness before the hearing to go over what information may be relevant to this question. It is likely that they have testified before and are familiar with the process. Opposing parties may also cross-examine the expert witness during *voir dire*. At the end of this process, you may ask the decision-making body to "accept the witness as an expert in the field of XYZ."
- During direct examination of the witness, focus on the conclusions they have made that support your position and the facts and reasoning that support those conclusions. If they have prepared a written report, introduce it into evidence and walk them through the key findings. Prepare your questions ahead of time, and, if possible, meet with the witness beforehand to go over them. You cannot direct the witness how to answer a question, but you can work with the witness to create questions that will best illuminate the points they want to make.
- It is helpful to conclude direct examination of an expert witness with a question or questions that allow them to concisely summarize their main points. For example, you could ask, "What have you concluded about the proposed development's impact on traffic in the area?"
- Expect the applicant to cross-examine any expert witness you present. Generally speaking, there are few rules governing what a party may or may not ask on cross-examination, but you may object to any questioning that is irrelevant to the matter being decided or repetitive.



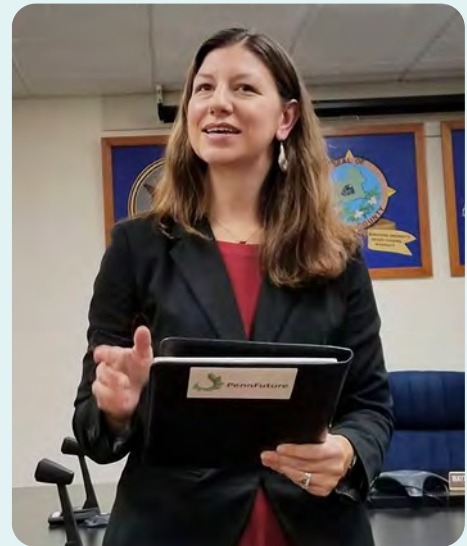
<https://www.dispatch.com/story/news/crime/2022/03/24/william-husel-trial-fentanyl-patient-care-unjust-fied-john-schweiger-testifies/7130169001/>

Briefing and Oral Argument

This is where it all comes together! Once all parties have finished presenting evidence, there may be an opportunity for parties to present argument. The decision-making body may request in-person oral closing arguments at the hearing or may have parties submit written briefs instead. Decision-making bodies are not required to allow argument at land use hearings, but they typically do if there is a lot of public interest in the matter or it is particularly complex. As a party, closing argument is your opportunity to explain your position, recap the evidence in your favor, and explain to the decision-making body why they should rule in your favor. However, even as a party, you are not required to make in-person argument or submit a brief. You may believe that other parties “have it covered,” or you simply may not have the time to prepare an oral argument or to write a brief. This is perfectly fine.

TIPS FOR BRIEFING AND ORAL ARGUMENT:

- As lawyers say, argument is “applying the facts to the law.” This means a good argument, whether oral or in writing, does two things:
 1. Describes the legal requirements that are applicable to the matter being decided; and
 2. Explains how the facts revealed through the witness testimony and exhibits at the hearing show how those requirements are or are not met, depending on your position.
- Argument is not the time to introduce new information. The decision-making body cannot consider any facts that are presented for the first time during argument. Argument is the time to take the information that was presented at the hearing and use it to convince the decision-making body to make a certain decision.
- Don’t feel obligated to argue every single issue. There may be certain aspects of an application that you are more concerned about than others. It is OK to focus on those aspects and not discuss others. For example, if your main concern about a proposed shopping center is its effect on a nearby stream, you do not necessarily have to make an argument about traffic or lighting, even if they were discussed at the hearing.
- One of the decision-making body’s responsibilities is to decide whether to believe each witness’s testimony (i.e., whether the witness is “credible”), and how important each piece of evidence is (i.e., how much “weight” to give it). Therefore, if there is conflicting evidence on a point that matters to your argument, it is useful to explain why you think certain witnesses are more credible than others and/or why certain evidence should be given more or less weight.
- Be persuasive! The key here is to point to all the law and evidence that proves your point and/or counters your opponent’s points.



continued on next page

TIPS FOR BRIEFING AND ORAL ARGUMENT, CONT.

- It is helpful in briefs to include citations to specific ordinance provisions if you are referencing them so the decision-making body knows where to find them (even if they don't memorize the zoning ordinance!) Don't worry about correct "legal" citation. It is perfectly acceptable to write "zoning ordinance section 610.2(B)" or "SALDO section 303." If the exact language of the ordinance is important to your argument, include the exact language in quotes.
- If the decision-making body or the solicitor provide guidelines for argument or briefing, make sure to follow those guidelines.
- If the decision-making body requests briefs, make sure you know the deadline and how the decision-making body prefers to receive the briefs (email, mail, etc.). Decision-making bodies may choose not to consider briefs submitted after the deadline. You may contact the solicitor if you have any questions about deadlines or format but be aware that the solicitor cannot give you advice on the content of your brief.
- If you plan to make an in-person closing argument, consider writing out what you will say beforehand. It is perfectly acceptable to refer to notes or even read them directly (lawyers do!).
- In-person closing arguments should be relatively short. Think 3 to 5 minutes, usually no more than 10 minutes, even for complex matters.

WHEN TO GET A LAWYER

As you may have gathered by now, land use processes can be complex, and effective participation requires a certain amount of skill. We'll be honest—it is often difficult for residents to navigate these processes and achieve their desired outcome without professional help. Attorneys bring skills and experience that are valuable when cross-examining witnesses, introducing evidence, making arguments, and writing briefs. For this reason, you may wish to consider hiring an attorney for formal hearings like conditional use/special exception hearings, especially when they involve particularly significant or complex matters.



The earlier in the process you involve an attorney, the better chance they will have of making a difference. It is difficult for an attorney to come in mid-hearing or after a hearing has concluded. If you decide to engage an attorney, look for one specializing in land use matters and/or one who is familiar with your municipality. Your county bar association can help you find one if necessary.

But lawyers are so expensive!! Yes, sadly, we know that this can be a huge barrier for many people, including organizations. There's no getting around the fact that residents often simply cannot afford to hire an attorney to participate in a lengthy land use hearing. If this is the case, consider asking an attorney to meet with you for an hour or two to go over the process you are facing and to offer tips for how to participate most effectively. Even if the attorney does not participate directly in the hearing, they may be able to suggest questions and evidence or give you an idea of your likelihood of success.

APPEALS

Things don't always go our way. Despite your best efforts as a party, the decision-making body may make a decision you disagree with. Does that mean you simply have to live with it? Not necessarily. As a party to a land use hearing, you may have the right to appeal the decision to the Court of Common Pleas. You may also be entitled to intervene in an appeal brought by another party.

An attorney is especially important if you are considering an appeal. Court proceedings are more formal and have more rules (and deadlines) than local land use proceedings. It is difficult to participate in any court proceeding without an attorney. Therefore, it is in your best interest to contact an attorney experienced in land use matters if you are interested in appealing a land use decision, even if you did not hire an attorney for the local proceeding. Be aware that there is a relatively short deadline—usually 30 days after the decision—for appealing most land use decisions. Therefore, if you are considering an appeal, contact an attorney as soon as possible.

There are various fees and hourly rates that attorneys can charge for their time, and different attorneys can charge different rates. Therefore, before you make a commitment, make sure you understand how much the attorney will expect you to pay, what exactly is covered by the fee, how it is calculated, and when you will have to make payment. Also understand that you must pay the attorney even if they do not win your case unless you have a written agreement otherwise (often referred to as a “contingency basis”). If you are sharing the expense of legal representation with other residents, we strongly suggest a written agreement laying out how the expenses will be shared.



THE RIGHT TO KNOW LAW

Often, effectively participating in a local land use matter requires information. Information that your municipality may have but you do not. Pennsylvania's Right to Know Law is one way to get this information.

The Right to Know Law (RTKL) gives residents the right to access **records** of state government entities, including municipalities. Municipalities are required to give access to records to persons who request them, as long as the request complies with the RTKL and the records are not exempt from disclosure.

Things to Know about the RTKL

- The RTKL gives persons the right to access information in physical form. It does not require government officials to answer questions. This means that you are only entitled to information that already exists in written form, whether physical or digital. For example, you may request the minutes of a meeting of the governing body but cannot request that a municipal official “tell me everything that happened at last week’s meeting.” The RTKL also does not require agencies to create written records when requested if they do not already exist.
- The municipality is not obligated to disclose all records. Some types of records are exempt from disclosure. These include, but are not limited to:
 - Medical records;
 - Personal identification information like an individual’s social security number, driver’s license number, phone number, email address, or spouse’s name;
 - Certain employment records of agency employees such as employment applications, reference letters, performance reviews, and disciplinary records;
 - Records of discussions between government officials made prior to a decision or action;
 - Notes made by municipal employees for their own personal use;
 - Records relating to a criminal or non-criminal investigation, including police incident reports and investigations of zoning ordinance violations;
 - Drafts of meeting minutes;
 - Bid proposals prior to the award of a contract;
 - Communications between the municipality and its insurance carrier; and
 - Communications between the municipality and its attorney.
- Be aware that a municipality is entitled to take up to 30 days to respond to a RTKL request. If your request is time-sensitive, make sure to make it as soon as possible.
- If you request physical copies of records, the municipality may charge a copying fee.
- In some cases, a municipality may allow you to view records but not to make copies or take records out of the office. This may include plan drawings and other copyrighted materials.
- For more information about the Right to Know Law, visit the [Office of Open Records \(OOR\) website](https://www.openrecords.pa.gov/index.cfm).⁵³

FOIA vs. RTKL

You may have heard of the Freedom of Information Act (FOIA). It gives citizens the right to access records of federal agencies. The Right to Know Law is a similar law that applies to Pennsylvania state agencies.

SECTION 6

⁵³ <https://www.openrecords.pa.gov/index.cfm>

TIPS FOR MAKING RIGHT TO KNOW LAW REQUESTS:

- Before making a formal RTKL request, call or email your municipality to informally request the records you are seeking. Municipalities sometimes give residents information without requiring a formal RTKL request.
- If you need to make a formal RTKL request, use the form provided by the municipality. Most municipalities make the form available on their website. If not, you can use the [standard RTKL request form](#) created by the Office of Open Records.⁵⁴
- When filling out the portion of the form for “records requested,” be as specific as possible. The RTKL allows agencies to deny requests that are too vague, so specificity will increase your chances of getting the records you want. Whenever possible, include a date range for the records you are requesting. For example:
 - Wrong: All records about the warehouse
 - Correct: All records relating to the proposed warehouse facility proposed by Big Corporation, LLC, located at 1204 Route 115, Franklin Township, tax ID No. 47.11.1.36, including, but not limited to all zoning, subdivision and land development and permit application materials submitted to the Township between March 13, 2023, and September 20, 2023.
- You may submit the form by mail, fax, email, or in person. Each municipality has a designated Right to Know Officer who is responsible for responding to RTKL requests. If your municipality has a website, it will likely identify who this person is. Address all correspondence and the RTKL request to this person.

pennsylvania
OFFICE OF OPEN RECORDS

Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: _____ (Attn: AOR)

Date of Request: _____ **Submitted via:** ☐ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: _____ **Company (if applicable):** _____

Mailing Address: _____

City: _____ **State:** _____ **Zip:** _____ **Email:** _____

Telephone: _____ **Fax:** _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☐ Email ☐ U.S. Mail

RECORDS REQUESTED: Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.

DO YOU WANT COPIES? ☐ Yes, printed copies (default if none are checked)
☐ Yes, electronic copies preferred if available
☐ No, in-person inspection of records preferred (may request copies later)

Do you want expedited copies? ☐ Yes (may be subject to additional costs) ☐ No

RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than \$100 (or) \$ _____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ **Date Received:** _____ **Response Due (5 bus. days):** _____

30-Day Ext? ☐ Yes ☐ No (If Yes, Final Due Date: _____) **Actual Response Date:** _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied **Cost to Requester:** \$ _____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record. More information about the RTKL is available at <https://www.openrecords.pa.gov> Form updated Feb. 3, 2020

⁵⁴ <https://www.openrecords.pa.gov/Documents/RTKL/RTKRequestForm.pdf>

OTHER THINGS YOU SHOULD KNOW

NIMBYS, BANANAS, AND CAVE PEOPLE

NIMBY stands for “not in my backyard” and is a term used for people who oppose all development occurring near where they live. NIMBYs may recognize that land development is necessary in general, but object to any and all land development that occurs near their own property or neighborhood. BANANA is an acronym for “build absolutely nothing anywhere near anything.” BANANAs take opposition to land development a step further and oppose virtually all development, no matter where it occurs, believing that land development is almost always bad. “Citizens against virtually everything” or CAVE people regularly oppose almost all changes to their community.

Being a NIMBY, BANANA, or CAVE person is an unrealistic attitude toward the prospect of land development in our communities. The simple fact is that human life requires alteration of the natural landscape, as well as changes to the built environment over time. If we want the comforts of modern life—varied and abundant food, readily-available retail goods, ample and affordable housing, quick and easy travel from place to place, and public utilities—we must understand that, somewhere, land and other natural resources must be used to make those benefits available to us. It is unreasonable to expect to take advantage of these benefits while also demanding that the land development that makes them possible take place only in places where we personally will not encounter it. It is even more unreasonable to insist that it should not occur at all.

This is not to say that there are not often legitimate concerns about whether development is appropriate at the location where it is proposed. There are many valid reasons why a particular development may not be suitable for a particular location or property, but a rigid desire for the landscape to remain unchanged under any circumstance is not one of them. As we discussed above, to be a helpful, and hopefully successful, participant in land use decision-making processes, you need to focus on the specifics of the law, the use, the property, and the impacts. It important for residents to realize that being a NIMBY, BANANA or CAVE person is rarely a successful approach to influencing decision-making bodies.



⁵⁵ <https://www.rubyhome.com/blog/hoa-stats/#hoa-by-state>

A WORD ABOUT COMMUNITY ASSOCIATIONS



Approximately ten percent of Pennsylvanians⁵⁵ live in housing governed by a **community association** such as a homeowners association (HOA) or a condominium association. A community association is a nongovernmental group of elected residents that creates and enforces rules for a particular housing community and manages common or shared property within the community. Community associations may also provide services such as security, road maintenance, and trash pickup, and activities for residents. Many people choose to live in communities controlled by community associations because these associations may offer services and amenities, protect owners' property values, and foster a sense of community through social activities. By purchasing a home in a community association, the owner agrees to abide by the association's rules—

called the Declaration of Covenants, Conditions, and Restrictions or CC&Rs— and, generally, to pay fees or dues.

It is important to remember that community associations are separate from local government and that local decision-making bodies do not have the power to enforce the rules of an HOA or other community association. A CC&R is a contract among property owners in a community, not an ordinance. It is legally enforceable, but only by the community association itself or by private lawsuit between members, not by the municipality. Therefore, disputes that arise as a result of non-compliance with a CC&R or other community association rule or concerns about the rules themselves should be brought before the community association, not the municipality.

A GENERAL NOTE ABOUT DECISION-MAKING

The following pages detail the relevant legal standards that guide each of the various land use decisions a local decision-making body may make. However, we want to take a moment here to address some factors that decision-making bodies generally cannot take into consideration.

First, a decision-making body cannot base a land use decision on the identity of the applicant or landowner. This means that out-of-state corporations must be treated the same as longtime local residents, and vice versa.

A decision-making body also cannot take into consideration the applicant's or landowner's motives for seeking the requested approval. For example, if an application satisfies the relevant legal standard, a decision-making body cannot deny an application because the applicant "is only out to make money." In the same way, the decision-making body cannot grant an application that does not meet the relevant legal standard because the applicant has "lofty" motives. Basing decisions on the decision-making body's perception of the applicant's motives is a recipe for arbitrary or biased outcomes and is therefore not permitted.

Similarly, it is not necessary for an applicant to affirmatively demonstrate that a proposed land use or development will "benefit the community." As discussed on page 9, land use ordinances are the tool

⁵⁵ <https://www.rubyhome.com/blog/hoa-stats/#hoa-by-state>

municipalities use to balance the benefits and drawbacks of development at each location. Therefore, land use and development that complies with these ordinances is assumed to be acceptable to the community. Although decision-making bodies may deny certain applications if it is demonstrated that the proposed use or development will harm the public health, safety, or welfare, they cannot deny an application that complies with the relevant ordinances simply because the proposal does not directly benefit other community members, or because community members believe they will be better off if the development does not occur. If land uses and development that comply with the existing ordinances are unacceptable to the community, it may be a sign that the ordinances should be amended to better reflect the community's desires.

Finally, it is important to understand the difference between specific ordinance requirements and what are known as “statements of policy.” Most land use ordinances contain a section or sections setting forth the “purposes” of the ordinance. These many include things like “promoting, public health, safety, morals, general welfare,” “facilitating coordinated and practical community development,” “providing for proper density of population,” “the provision of adequate light and air, police protection, transportation, water supply management, and other public requirements,” and “preventing overcrowding of land, blight, and danger.” These are general statements of what the municipality set out to accomplish when adopting the ordinance, not specific requirements that individual applicants are required to meet. Therefore, a decision-making body cannot deny an application the complies with all the specific standards in the ordinance on the basis that it is contrary to the purposes of the ordinance. However, the purposes of the ordinance may help a decision-making body interpret specific requirements if there is any ambiguity as to their meaning.

A NOTE ABOUT DEADLINES

The MPC often imposes deadlines on decision-making bodies, requiring them to approve or deny applications within a specific time period. These deadlines primarily exist to move the process along for the benefit of the applicant, so that municipalities cannot stall or prevent development by “slow walking” an application or simply refusing to act on it. The MPC allows applicants to grant decision-making bodies an extension of these deadlines, and this is quite common. Applicants often request or agree to push back decision-making deadlines to allow themselves more time to address a decision-making body's concerns, as this is generally preferable to forcing a decision when the applicant knows the decision-making body will not approve the application as it stands.

It is important to remember that these deadlines are imposed on the decision-making body, not the applicant. Applicants generally are not required to respond to a decision-making body's comments or review letters in any specific timeframe. It is also important to understand that an applicant who agrees to extend the decision deadline for the decision-making body is not making a promise to delay their own activity for that period of time. For example, an applicant who agrees to a 90-day extension of the deadline may return and present a revised plan to the decision-making body before the 90 days are up. It is also important to understand that these deadlines may prevent decision-making bodies from delaying decisions indefinitely to allow residents to gather more information about a proposal or organize support or opposition to it.



TYPES OF LAND USE PROCEEDINGS

Now that you know all about the different municipal decision-making bodies, where to find out about public meetings and hearings, and how to participate in them, it's time to get down to the details of how each type of land use decision is made. This means learning about the relevant legal standards for each. The fact sheets on the following pages will give you the last piece of information to truly participate effectively in each type of proceeding.



FACT SHEET: LAND USE ORDINANCE ADOPTION OR AMENDMENT

| FAST FACTS | |
|--|---|
| Decision-making body | Governing body of the municipality |
| Type of proceeding | Public meeting(s) |
| Opportunities for participation | Public comment at planning commission meeting, work session of the governing body, and/or meeting of the governing body See page 33 for general tips for making public comment. |
| Where to find info | Agendas of planning commission and/or regular meetings of the governing body In a newspaper of general circulation between 60 and 7 days prior to the meeting. ⁵⁶ If the amendment involves a change to the zoning map, notice must be mailed to the owners of affected properties at least 30 days prior to the hearing and posted on the affected properties at least one week prior to the hearing. ⁵⁷ |

What is an Ordinance Adoption or Amendment?

When a municipality creates and enacts a new ordinance, it is called adopting an ordinance. An ordinance amendment is a change to an existing ordinance.

Overview of the Process

Most municipalities in Pennsylvania already have zoning ordinances and SALDOs. Therefore, most “new” land use ordinances are actually amendments to these existing ordinances. This process of drafting a land use ordinance amendment usually begins with the planning commission. This can happen in several ways. The governing body, zoning officer, or members of the public may alert the planning commission to the need for amendments. The planning commission may also undertake routine reviews of the existing ordinances and decide that changes need to be made due to changes in patterns of development or problems with the existing ordinance. If it concludes that amendments are needed, the planning commission will notify the governing body, which may direct the planning commission to prepare a proposed ordinance.

If directed, the planning commission may work with the municipal solicitor, zoning officer, engineer, outside consultants, county-level planners, and/or members of the public to draft a proposed ordinance. The planning commission may also consider model ordinances created by outside organizations. This may

⁵⁶ 53 P.S. § 10610(a).

⁵⁷ 53 P.S. § 10609(b).

take many months, and the ordinance may go through several drafts. It may be discussed at one or more public meetings of the planning commission, at which the public may comment.

Once the planning commission has completed a proposed ordinance or amendment, it will submit the draft to the governing body for its consideration. Alternatively, the governing body may choose to draft the ordinance itself, without or without the help of the planning commission and/or outside consultants. It may hold a work session or sessions to work through the drafting.

Once the planning commission has presented the proposed ordinance to the governing body, the governing body may hold a work session or sessions to discuss whether changes should be made. This, too, may take several meetings over a period of time. Once the governing body believes the ordinance or amendment is ready to be adopted, it will publish notice of a public meeting to formally adopt the ordinance. If the planning commission did not prepare the proposed amendment, the governing body must submit it to the planning commission at least 30 days before this meeting and give it an opportunity to make recommendations. It also must submit the ordinance to the county planning commission for its recommendations within the same timeframe.

At the public meeting to consider the ordinance, the public will have the opportunity to comment on the proposed ordinance or amendment. After receiving public comment, the governing body may vote to adopt the ordinance or may make changes based on the public comment and postpone the vote to another meeting. If the changes are significant, the governing body must re-advertise the meeting.

Legal Standard

When it comes to the content of a zoning ordinance or SALDO, governing bodies have “broad discretion,” which is the lawyerly way to say that they have a lot of leeway in deciding the specific content of the ordinance. Generally speaking, the only legal restraints on land use ordinances are that they must:

1. Address only the types of matters the MPC allows in a land use ordinance.⁵⁸ For example, a municipality cannot pass an ordinance regulating the use of fireworks and call it a zoning ordinance because setting off fireworks is not related to the use of land.
2. Not conflict with the MPC. For example, a municipality could not pass an ordinance that creates different requirements for a variance than the ones provided by the MPC.
3. Not in conflict with a “higher” law like a state or federal statute or the state or federal constitution. For example, a zoning ordinance that bans political signs would not be valid because it would violate the First Amendment.
4. Not be “arbitrary and irrational.” This means that the ordinance must have some rational relationship to a legitimate government purpose. For example, an ordinance that prohibits spelling “shops” like “shoppes” on a sign for a shopping center would be arbitrary and irrational because there is no legitimate reason for the government to prefer one spelling over another.⁵⁹

⁵⁸ For a detailed list of the types of things that can be included in a SALDO, refer to section 503 of the MPC. For a list of the types of things that can be included in a zoning ordinance, see sections 603 and 604. Planned residential developments are addressed in section 705.

⁵⁹ This does not mean I would not really like for this law to exist.

Effective Participation

The governing body's broad discretion when it comes to enacting ordinances does not mean that there is no place for public input. In fact, because governing bodies have such broad discretion, public opinion can have a significant influence in shaping ordinances.

TIPS FOR MAKING PUBLIC COMMENT ON A PROPOSED ORDINANCE:

- Participate early in the process. A governing body is less likely to change an ordinance that it spent months drafting than it is to take public comment into consideration at the early stages of drafting. See page 27 for more information about how to stay up to date on public meetings and hearings in your municipality.
- Useful topics for comments include:
 - How you believe the proposed amendment will change your experience as a resident of the municipality, whether positively or negatively.
 - How you believe the proposed amendment will affect the environment, whether positively or negatively.
 - Aspects of the proposed ordinance that could be interpreted in more than one way or otherwise may need to be clarified.
 - Suggestions for additional provisions covering related matters but not included in the proposed ordinance.

Also see page 15 for tips for how to advocate for your own ordinance amendment.

FACT SHEET: CONDITIONAL USE OR SPECIAL EXCEPTION APPLICATION

| FAST FACTS | |
|--|--|
| Decision-making body | Governing body of the municipality (conditional use) or ZHB (special exception) |
| Type of proceeding | Hearing |
| Opportunities for participation | Participate as a party at the hearing (see page 35), make public comment at the hearing (see page 33). |
| Where to find info | In a newspaper of general circulation, between 30 and 7 days prior to the hearing. ⁶⁰ |

What is a Conditional Use/Special Exception Hearing?

Conditional uses are land uses that must obtain zoning approval from the governing body. If a person proposes to develop a conditional use, the governing body will hold a hearing to determine whether that use is appropriate at the proposed location, based on the criteria in the zoning ordinance. A conditional use hearing focuses on the use of the land, not the particulars of the building design or construction, which are the subject of land development approval (see page 61). Special exception uses are effectively the same as conditional uses except that special exception applications are decided by the ZHB, not the governing body.

Overview of the Process

The process begins when a landowner or developer submits an application for conditional use or special exception approval. The zoning ordinance may specify the materials that the applicant must include with the application. Once the application is complete, the appropriate decision-making body will schedule and advertise a public hearing.

The public hearing will be conducted as described on page 25 and may take place over multiple days. The municipality is not required to publish notice of each subsequent hearing after the first hearing, but some choose to do so as a courtesy. The time and date of the next hearing is announced at the end of each hearing. Once the hearing concludes, the decision-making body will orally announce its decision and, within 45 days, issue a written decision explaining its reasoning for granting or denying the application and for any conditions it imposes on approval, if applicable.

⁶¹ *In re Appeal of the Bd. of Comm'rs of Cheltenham Twp.*, 211 A.3d 845, 846 (Pa. 2019); *In re Thompson*, 896 A.2d 659, 670 (Pa. Cmwlth. 2006).

Conditional Use/Special Exception vs. Subdivision and Land Development

We want to pause here to discuss the difference between a conditional use/special exception approval and subdivision and land development approval, as this is commonly misunderstood. A conditional use/special exception applicant will almost always have to obtain both conditional use/special exception approval and land development approval before they can begin construction on a project.⁶¹ These are separate processes addressing different concerns. Conditional use/special exception hearings focus on whether the proposed *use* of the land is appropriate in the proposed location.⁶² The focus in a conditional use/special exception hearing is on compliance with the zoning ordinance, not the SALDO. Details about building and parking layout, lighting, landscaping, and stormwater management are generally left to the subdivision and land development approval stage, although these matters may be discussed to some extent at a conditional use/special exception hearing.

The exception to this is where a zoning ordinance explicitly requires a conditional use/special exception applicant to demonstrate compliance with certain requirements. In that case, these items must be addressed at the conditional use/special exception approval stage, even if they are things that are normally left to land development stage. For example, a zoning ordinance may require a conditional use applicant to demonstrate compliance with requirements pertaining to sewage capacity, storm water management, or water supply, even though those matters would otherwise be addressed in a land development application.⁶³

Legal Standard

It is important to remember that, despite the name, special exception uses and conditional uses are not “exceptions” to the zoning ordinance.⁶⁴ They are uses that are expressly permitted and that the applicant is entitled to so long as they comply with specific objective requirements in the zoning ordinance.⁶⁵ The public hearing is not an opportunity for the decision-making body or the public to exercise broad, standardless veto power over a use that complies with the zoning ordinance and does not otherwise constitute a significant adverse impact on the community. See page 9 for more about why decisions must be rooted in ordinances, not public opinion.⁶⁶

The Applicant’s Burden

The legal standard for conditional use/special exception approval is one of the more complex and misunderstood standards in the land use world and it requires somewhat detailed explanation. To begin, the applicant has the responsibility (“has the burden”) to prove three things:

1. The proposed use meets the “threshold definition” of what is authorized as a conditional use.⁶⁷ For example, if the ordinance allows a warehouse as a conditional use, the applicant must prove that the proposal fits the definition of a warehouse and is not a different use such as retail store or manufacturing facility.

⁶¹ *In re Appeal of the Bd. of Comm’rs of Cheltenham Twp.*, 211 A.3d 845, 846 (Pa. 2019); *In re Thompson*, 896 A.2d 659, 670 (Pa. Cmwlth. 2006).

⁶² *In re Thompson*, 896 A.2d 659, 670 (Pa. Cmwlth. 2006); *Concerned Citizens of Exeter Twp., Inc. v. Bd. of Supervisors of Exeter Twp.*, 1 Pa.D.&C.5th 429, 441 (C.P. Berks 2006) (citing *In re Thompson*, 896 A.2d 659, 670 (Pa. Cmwlth. 2006)).

⁶³ *Heisler’s Egg Farm, Inc. v. Walker Twp. Zoning Hearing Bd.*, 232 A.3d 1024, 1040 (Pa. Cmwlth. 2020); *Schatz v. New Britain Twp. Zoning Hearing Bd. of Adjustment*, 596 A.2d 294, 298 (Pa. Cmwlth. 1991).

⁶⁴ *Broussard v. Zoning Bd. of Adjustment*, 831 A.2d 764, 769 (Pa. Cmwlth. 2003).

⁶⁵ *Blancett-Maddock v. City of Pittsburgh Zoning Bd. of Adjustment*, 640 A.2d 498, 500 (Pa. Cmwlth. 1994).

⁶⁶ *Id.*

⁶⁷ *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212 (Pa. Cmwlth. 2014) (quoting *Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909, 911 (Pa. Cmwlth. 1980)).

2. The proposed use satisfies the requirements or standards applicable to the conditional use.⁶⁸ For example, if the zoning ordinance requires the use to have a landscape buffer between it and neighboring residential properties, the applicant must demonstrate that there will be a landscape buffer. These requirements may be requirements that apply to all conditional uses/special exception uses or requirements that apply only to the specific type of use proposed. See Appendix B for more information about how to find these requirements in the zoning ordinance.
3. The proposed use satisfies specific requirements applicable to the use even when not a conditional use. This includes things like setbacks, size maximums or parking requirements applicable to all uses in the applicable zoning district.⁶⁹

Note the use of the word “specific” in items 2 and 3. This means that the applicant only has to show compliance with concrete, reasonably definite requirements in the zoning ordinance.⁷⁰ They do not have to show compliance with vague or subjective requirements or policy statements.⁷¹ For example, an applicant cannot be made prove that the proposed use is “in harmony with the general purpose and intent of the zoning ordinance” or that it is “not detrimental to the neighborhood” because these requirements do not give the applicant sufficient guidance as to what they can and cannot do. Requiring the applicant to prove compliance with requirements like these would effectively mean that they would have to “negate every conceivable and unvoiced objection to the proposed use.”⁷² Therefore, the applicant is only required to address these types of generalized requirements if objectors produce evidence that the proposed development does not comply with them, as explained below.

The Objectors’ Burden

If the applicant proves the three things above, they are entitled to conditional use/special exception approval unless objecting parties produce evidence of a “*high probability* that the use will generate adverse impacts not normally generated by the type of use and that these impacts will pose a *substantial threat* to the health and safety of the community.”⁷³

This is a difficult burden to meet, and the most common error of objectors in conditional use/special exception cases is failing to understand it.⁷⁴ The existence of a conditional use or special exception use in the zoning ordinance means that governing body has already decided that the degree of impact normally associated with the use is acceptable if the use is developed in accordance with the specific requirements in the ordinance.⁷⁵ Therefore, for a conditional use/special exception to be denied due to adverse impacts, the impact from the specific project proposed must be greater than the impact which would normally result from that type of use.⁷⁶ For example, if the zoning ordinance permits a trucking terminal by special exception, it is not enough for objectors to show that the typical impacts of a trucking terminal (e.g. traffic or noise) are detrimental to the community. They must show that that the particular trucking terminal proposed will create greater detrimental impacts than a typical trucking terminal.⁷⁷

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909, 911 (Pa. Cmwlth. 1980) (quotation omitted).

⁷¹ *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212 (Pa. Cmwlth. 2014) (quoting *Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909, 911 (Pa. Cmwlth. 1980)) (emphasis in original); *Levin v. Bd. of Supervisors*, 669 A.2d 1063, 1070 (Pa. Cmwlth. 1995).

⁷² *Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909, 911 (Pa. Cmwlth. 1980).

⁷³ *Oasis v. Zoning Hearing Bd.*, 94 A.3d 457, 465 (Pa. Cmwlth. 2014) (emphasis in original); *Marr Dev. Mifflinville, LLC v. Mifflin Twp. Zoning Hearing Bd.*, 166 A.3d 479, 484 (Pa. Cmwlth. 2017).

⁷⁴ *Oasis v. Zoning Hearing Bd.*, 94 A.3d 457, 465 (Pa. Cmwlth. 2014) (emphasis in original); *Marr Dev. Mifflinville, LLC v. Mifflin Twp. Zoning Hearing Bd.*, 166 A.3d 479, 484 (Pa. Cmwlth. 2017).

⁷⁵ *Lower Providence Twp. v. Ford*, 283 A.2d 731, 733 (Pa. Cmwlth. 1971).

⁷⁶ *Lower Providence Twp. v. Ford*, 283 A.2d 731, 733 (Pa. Cmwlth. 1971).

⁷⁷ *EQT Prod. Co. v. Borough of Jefferson Hills*, 541-42, 208 A.3d 1010, 1029 (Pa. 2019) (J. Mundy, dissenting) (citing *In re Cutler Group*, 880 A.2d 39, 43 (Pa. Cmwlth. 2005)).

This burden is admittedly difficult to meet because objectors cannot simply speculate about possible harm, offer personal opinions, or make bald assertions about anticipated harms.⁷⁸ Objectors must produce evidence of the likely impacts of a use that does not yet exist and compare those impacts to those associated with a typical use of the same kind. Often, expert testimony is required for this, which can be expensive. However, non-expert testimony and other evidence can also be useful. For example, if objectors are concerned about the amount of traffic that would be generated by a proposed use during rush hour, they could visit other similar uses during that time, count vehicles entering and exiting the property, and compare that number to the predicted number of vehicle trips from the proposed use.

The zoning ordinance may offer clues as to the type of health, safety, and welfare impacts that the decision-making body is concerned about when considering a conditional use or special exception application. Remember those subjective requirements and policy statements discussed in the section above? The ones that the applicant does not have to address right away? These are the types of impacts that objectors should focus on. If objectors produce evidence of these types of detrimental impact on public health, safety, and welfare, the applicant then must refute (“rebut”) that evidence to demonstrate that the use will not create an undue detriment.

Conditions to Approval

If the decision-making body approves the conditional use/special exception, it may impose **conditions** on the approval.⁷⁹ If the applicant does not meet the conditions, the decision-making body can revoke the approval, or treat the failure to meet the condition as a violation of the zoning ordinance and take enforcement action. The decision-making body has a lot of leeway when imposing conditions, but conditions cannot come “out of thin air.”⁸⁰ Conditions:

- must be related to a requirement in the zoning ordinance or the MPC;⁸¹
- must address some harm for which there is evidence in the record;⁸²
- cannot be too vague to implement;⁸³ and
- cannot be related to off-site transportation or road improvements.⁸⁴

Parties and other members of the public may propose conditions that they believe will reduce concerns they may have about the proposal.

Effective Participation

Effectively participating in a conditional use/special exception hearing requires understanding the standard above. There are three areas to focus on: 1) whether the proposed use meets the definition of the use that is authorized by the zoning ordinance; 2) whether the proposed use meets the specific, objective requirements in the zoning ordinance; and 3) whether the proposed use constitutes a detriment to public health, safety and welfare that goes beyond the impact of similar uses. Often, it is easier to focus on the first two because proving the third can be difficult.

⁷⁸ *Marquise Inv., Inc. v. City of Pittsburgh*, 11 A.3d 607, 615 (Pa. Cmwlth. 2010); *Sluciak v. Cecil Twp. Bd. of Supervisors*, 223 A.3d 725, 730 (Pa. Cmwlth. 2019).

⁷⁹ 53 P.S. § 10603(c)(2).

⁸⁰ *HHI Trucking & Supply, Inc. v. Borough Council*, 990 A.2d 152, 160 (Pa. Cmwlth. 2010).

⁸¹ *Whitehall Fiduciary, LLC v. Zoning Hearing Bd.*, 49 A.3d 945, 948 (Pa. Cmwlth. 2012).

⁸² *HHI Trucking & Supply, Inc. v. Borough Council*, 990 A.2d 152, 160 (Pa. Cmwlth. 2010).

⁸³ *HHI Trucking & Supply, Inc. v. Borough Council*, 990 A.2d 152, 162 (Pa. Cmwlth. 2010).

⁸⁴ 53 P.S. § 10603(c)(2).

TIPS FOR PARTICIPATING IN A CONDITIONAL USE OR SPECIAL EXCEPTION HEARING:

- Obtain a copy of the conditional use/special exception application and any accompanying documents from the municipality prior to the hearing. This can be done by calling, emailing, or visiting the municipal office. You may have to submit a Right to Know Law request (see page 43).
- Review the zoning ordinance before attending the hearing. Pay particular attention to 1) the use classification that is permitted by conditional use or special exception and how that use is defined in the zoning ordinance; and 2) the objective requirements for the conditional use/special exception use (see Appendix B for more information about how to read a zoning ordinance).
- Note any ways in which the application or plans indicate that the proposed use may or may not meet the definition of the use that the applicant says that it is.
- Note any ways in which the application or plans indicate that the proposed use may or may not satisfy the specific objective criteria for the conditional use/special exception use specified in the zoning ordinance.
- At the hearing, listen to the witness testimony presented by the applicant. Make note of points that are relevant to:
 - whether the use being described satisfies the definition of the use that is permitted by conditional use/special exception;
 - whether the specific, objective requirements for the specific conditional use/special exception are met; and
 - whether the use will create a detrimental impact that is above and beyond what would typically be expected from that type of use.
- If you are a party, ask clarifying questions during cross-examination if any of the witnesses' testimony on these points is unclear (see page 36 for more tips for cross-examination).
- If you are a party, to the extent possible, present evidence showing that the proposed use has a detrimental impact that goes beyond the impact that would normally accompany the type of use. (see page 38 for more tips for presenting evidence).
- When making arguments (whether in briefs or in person) or public comment, focus on the two areas discussed above. Showing that the use does not comply with the zoning ordinance or that it will create an unacceptable detrimental impact is more effective than stating that "no one wants this here." Remember, residents do not have veto power over land use proposals that comply with the zoning ordinance. See pages 9 and 46 for more about why land use decisions are based on ordinances, and why certain considerations cannot be the basis for land use decisions.
- Consider conditions you would like to see if the application is approved and propose them to the decision-making body. Be prepared to state how the proposed condition relates to a requirement in the zoning ordinance. Often, even if an issue or concern does not justify denying an application outright, it may be enough to justify a condition to lessen the impact.

FACT SHEET: VARIANCE APPLICATION

| FAST FACTS | |
|--|--|
| Decision-making body | ZHB |
| Type of proceeding | Hearing |
| Opportunities for participation | Participate as a party at the hearing (see page 35), make public comment at the hearing (see page 33). |
| Where to find info | In a newspaper of general circulation, between 30 and 7 days prior to the hearing. |

What is a Variance?

A variance allows a landowner to be officially excused from complying with a specific provision or requirement of a zoning ordinance when certain criteria are met.

Overview of the Process

Variance requests may be part of a multi-step approval process for a proposed development, or they may be standalone applications. They may involve as-of-yet unbuilt projects or changes to existing structures. For example, a developer proposing to construct a new warehouse may request a variance to build the structure higher than the ordinance allows or the owner of an existing single-family home may request a variance to conduct an in-home business where the ordinance does not allow it. Developers who seek variances as part of a multi-step approval process are not necessarily required to do so prior to applying for conditional use/special exception or land development approval, but, in practice, developers who must go through multiple approval processes often make variance requests their first step. Applicants may also request multiple variances in a single application.

The process begins when the person seeking a variance submits an application. The application normally contains a brief description of the applicant's proposed project, a reference to the zoning ordinance provision that they would like to be exempted from, and the "relief" that the applicant wants, i.e., what the applicant would like to be allowed to do. When the ZHB receives the application, it will schedule and advertise a hearing, to be conducted as described on page 25. Most variance hearings take only one day. Once the hearing concludes, the ZHB will orally announce its decision and, within the next 45 days, issue a written decision explaining its reasoning for granting or denying the variance.

Legal Standard

Unlike a conditional use or special exception (see page 52), a variance is a true exception to the requirements of the zoning ordinance.⁸⁵ It allows the applicant to "break the rules." For this reason, variances should only be granted "sparingly and only under exceptional circumstances," when certain, specific requirements are met.

⁸⁵ *Brennen v. Zoning Bd. of Adjustment of City of Connellsville*, 187 A.2d 180, 182 (Pa. 1963); *S. Broad St. Neighborhood Ass'n v. Zoning Bd. of Adjustment*, 208 A.3d 539, 547 (Pa. Cmwlth. 2019) ("A variance, as the name implies, is a departure or variance from the exact provisions of a zoning ordinance.").

Like all other land use decisions, variance requests must be decided according to a legal standard, not whether or not the ZHB (or the applicant's neighbors) consider the request to be objectionable or offensive. The legal standard for a variance is found in the MPC. An applicant is entitled to a variance if, and only if, *all* of the following conditions are met:⁸⁶

1. there are unique physical circumstances or conditions peculiar to the property that impose an unnecessary hardship;
2. because of such unique physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the zoning ordinance and that the variance is therefore necessary to enable the reasonable use of the property;
3. the unnecessary hardship has not been created by applicant;
4. the variance will not alter the essential character of the neighborhood; and
5. the variance represents the minimum variance that will afford relief.⁸⁷

The person seeking the variance is responsible for (“has the burden of”) proving that each of these conditions is met.⁸⁸ This burden is a heavy one, and the reasons for granting the variance must be substantial, serious, and compelling.⁸⁹

Let's take a closer look at each part of the standard:

Unique physical condition of the land

For an applicant to be entitled to a variance, the subject property must have some physical characteristic, such as steep slopes or an unusual lot shape, that is not generally shared by other properties in the same zoning district.⁹⁰ The physical condition does not have to be absolutely unique to the property, but it cannot be typical of the properties in the zoning district.⁹¹ For example, a property with steep slopes would not necessarily be denied a variance if a handful of neighboring properties also had steep slopes, but a variance would not be appropriate if most or all of the properties in the zoning district had steep slopes.⁹² This requirement is often overlooked by ZHBs.

Unnecessary hardship/reasonable use of the property

It is not enough for the property to have a unique physical characteristic. That physical characteristic must create an “unnecessary hardship” such that a variance is necessary to enable reasonable use of the property. Although “unnecessary hardship” and “reasonable use of the property” are listed separately in the list of requirements for a variance, they are closely related, and the analysis of the two factors generally merges into a single analysis focused on “hardship.”

A hardship is some difficulty or burden that the applicant will have to face if they are required to comply with the zoning ordinance. One type of hardship may be difficulty in constructing a use that complies with the ordinance. For example, a zoning ordinance that prohibits structures within 100 feet of a pond could create a hardship on a property with a pond in the middle if not enough space remained outside the restricted area to construct anything.⁹³ Another form of hardship is financial burden. For example, a setback requirement could be a hardship for a landowner seeking to construct a shed if complying

⁸⁶ *Joyce Outdoor Advert., LLC v. Zoning Hearing Bd.*, 263 A.3d 48 (Pa. Cmwlth. 2021).

⁸⁷ *Pequea Twp. v. Zoning Hearing Bd. of Pequea Twp.*, 180 A.3d 500, 506 (Pa. Cmwlth. 2018) (citing 53 P.S. § 10910.2).

⁸⁸ *Appeal of Horsham Twp.*, 520 A.2d 1226, 1227 (Pa. Cmwlth. 1987).

⁸⁹ *Pequea Twp. v. Zoning Hearing Bd.*, 180 A.3d 500, 507 (Pa. Cmwlth. 2018).

⁹⁰ *Halberstadt v. Borough of Nazareth*, 687 A.2d 371, 373 (Pa. 1997).

⁹¹ *Halberstadt v. Borough of Nazareth*, 687 A.2d 371, 373 (Pa. 1997).

⁹² *Halberstadt v. Borough of Nazareth*, 687 A.2d 371, 373 (Pa. 1997).

⁹³ *Somers v. Stroud Twp. Zoning Hearing Bd.*, 913 A.2d 306 (Pa. Cmwlth. 2006).

with the ordinance would require an expensive custom-sized building and a variance would allow the landowner to use a less-expensive prefabricated one.

The line between a hardship that justifies a variance and one that doesn't is blurry.⁹⁴ In general, it is not enough if the zoning ordinance merely prevents the applicant from building exactly as they wish, getting highest and best financial gain out of their property, or maximizing development potential.⁹⁵ However, the hardship need not be so extreme that the property is essentially worthless without the variance.⁹⁶ In general, more hardship is required to justify a use variance than is required for a dimensional variance.⁹⁷

The Hardship is Not Self-Inflicted

An applicant is not entitled to a variance if the landowner's own action is the cause of the condition that creates the hardship. For example, hardship would be self-inflicted if a landowner subdivided their property to create lots that were too small to be developed under the zoning ordinance and then requested a variance from the minimum lot size requirement.⁹⁸ Hardship is also self-inflicted if the variance applicant has built or expanded a structure or structures on the property in such a way that precludes further development without a variance.⁹⁹ Hardship is *not* self-inflicted simply because the landowner purchased the property with knowledge of the physical conditions of the land and the zoning restrictions.¹⁰⁰

Neighborhood Impact

This factor requires the applicant to demonstrate that the requested variance will not alter the essential character of the neighborhood.¹⁰¹ For example, permitting a commercial use on property zoned for industrial use may not alter the essential character of the neighborhood, but permitting a commercial use in an area surrounded by residential uses might.¹⁰¹ For this requirement, neighboring property owners' testimony is particularly relevant, but cannot be speculative in nature.¹⁰³

The Variance Is the Minimum Variance Necessary to Afford Relief

Even if all the other requirements are met, a ZHB may only grant the minimum variance necessary. This means that the variance must be the smallest modification of the zoning requirement that is necessary to relieve the hardship.¹⁰⁴ For example, an applicant may be entitled to a variance from a pond buffer requirement if the location of the pond on the lot limits the developable area. However, this person would not be entitled to construct a 1,000-square-foot residence if an 800-square-foot residence would be feasible and result in less encroachment into the buffer.

⁹⁴ *Kneebone v. Zoning Hearing Bd. of the Twp. of Plainfield*, 273 A.3d 553, 569 (Pa. 2022);

⁹⁵ *Kneebone v. Zoning Hearing Bd. of the Twp. of Plainfield*, 273 A.3d 553, 569 (Pa. 2022); *Dunn v. Middletown Twp. Zoning Hearing Bd.*, 143 A.3d 494, 501 (Pa. Cmwlth. 2016).

⁹⁶ *Kneebone v. Zoning Hearing Bd. of the Twp. of Plainfield*, 273 A.3d 553, 569 (Pa. 2022); *Dunn v. Middletown Twp. Zoning Hearing Bd.*, 143 A.3d 494, 501 (Pa. Cmwlth. 2016).

⁹⁷ *Kneebone v. Zoning Hearing Bd. of the Twp. of Plainfield*, 273 A.3d 553, 564 (Pa. 2022).

⁹⁸ *In re Appeal of Grace Bldg. Co.*, 392 A.2d 888, 890 (Pa. Cmwlth. 1978); *Borough of Baldwin v. Bench*, 315 A.2d 911, 913 (Pa. Cmwlth. 1974).

⁹⁹ *Larsen v. Zoning Bd. of Adjustment*, 672 A.2d 286, 291 (Pa. 1996).

¹⁰⁰ *Solebury Twp. v. Solebury Twp. Zoning Hearing Bd.*, 914 A.2d 972, 976 (Pa. Cmwlth. 2007) (citation omitted).

¹⁰¹ 53 P.S. § 10910.2(4).

¹⁰² *S. St. Neighborhood Ass'n v. Phila. Zoning Bd. of Adjustment*, 54 A.3d 115, 124 (Pa. Cmwlth. 2012) (overruled on other grounds by *Scott v. City of Phila.*, 126 A.3d 938 (Pa. 2015)).

¹⁰³ *In re Appeal of Jones*, 29 A.3d 60, 64 (Pa. Cmwlth. 2011) (citing *In re Appeal of Fiori*, 451 A.2d 804, 807 (Pa. Cmwlth. 1982)) (finding testimony about the expected traffic impact of a new use was speculative and therefore insufficient).

¹⁰⁴ *Larsen v. Zoning Bd. of Adjustment*, 543 Pa. 415, 428, 672 A.2d 286, 292 (1996) (citing 53 P.S. § 10910.2(a)(5)).

Conditions to Variance Approval

The ZHB is allowed to attach conditions to a variance approval.¹⁰⁵ Conditions must relate to the purpose of the zoning ordinance provision from which the variance is sought.¹⁰⁶ For example, if a ZHB grants a variance from a setback requirement for a garage, it cannot include a condition that the garage not be used for vehicle repair because the setback requirement has nothing to do with use of the structure, only its location.¹⁰⁷

Effective Participation

TIPS FOR PARTICIPATING IN A VARIANCE HEARING:

- Obtain a copy of the variance application and any accompanying documents from the municipality prior to the hearing. This can be done by calling, emailing, or visiting the municipal office. You may have to submit a Right to Know Law request (see page 43).
- Review the zoning ordinance before attending the hearing. Understand which provision(s) the applicant is seeking variance(s) from.
- Note any ways in which the application or plans show that the proposed use may or may not meet the standard discussed above.
- At the hearing, listen to any witness testimony presented by the applicant. Make note of points that are relevant to each of the five factors discussed above. It may help to make a table or chart listing each of the factors so you can fill in facts related to each during the testimony.
- If you are a party, ask clarifying questions during cross-examination if any of the witnesses' testimony on these points is unclear. See page 36 for more tips for cross-examination.
- If you are a party, consider presenting evidence showing that the proposed use does not (or does) meet the required factors. Logical factors for parties to present evidence on are the physical characteristics of the land as compared to other properties in the zoning district and the character of the neighborhood. Photographs may be useful to show these things.
- When making arguments (whether in briefs or in person) or public comment, focus on the factors discussed above rather than simply expressing your personal approval or disapproval of the proposal. Remember, the applicant has the burden of proving all five elements of the standard. If you do not think the variance should be granted and the applicant failed to address one or more of the factors, point this out.
- Consider conditions you would like to see if the variance is granted and propose them to the decision-making body. Be prepared to state how the proposed condition relates to the provision of the zoning ordinance from which the variance is sought. Even if an issue or concern does not justify outright denying a variance, it may be enough to justify a condition to lessen the impact.

¹⁰⁵ 53 P.S. § 910.2(b)

¹⁰⁶ *Twp. of Harrison v. Smith*, 636 A.2d 288, 290 (Pa. Cmwlth.1993).

¹⁰⁷ *Id.*

FACT SHEET: SUBDIVISION AND LAND DEVELOPMENT APPLICATION

| FAST FACTS | |
|--|---|
| Decision-making body | Governing body of the municipality |
| Type of proceeding | Planning commission meeting, meeting of the governing body |
| Opportunities for participation | Make public comment at planning commission meeting and/or meeting of the governing body (see page 33 for tips for making public comment). |
| Where to find info | Planning commission and governing body agendas |

What is subdivision and land development approval?

The subdivision and land development approval process focuses on whether a proposed land development or subdivision complies with the SALDO. It concerns things like building and street layout, stormwater management, sewage treatment, lighting, landscaping, and parking. It is typically required only when significant new development or significant changes to existing structures are proposed.

Although subdivision and land development are often addressed together, they are technically different things. Subdivision refers to dividing a parcel into two or more lots or adjusting existing lot lines regardless of whether anything is built on the lots.¹⁰⁸ Subdivision can also refer to combining multiple lots together into one parcel (this is called merging lots). Land development refers to the construction of improvements on the land, such as buildings, streets, stormwater basins, etc.¹⁰⁹ Many development proposals include both subdivision and land development, but it is also possible for one to occur without the other. The decision-making process is the same for both, and “land development” is often used as shorthand, especially when a particular proposal does not include dividing or combining lots. Occasionally, when a proposal involves both subdivision and land development, the developer will seek subdivision approval separately from land development approval, with subdivision approval normally occurring first. More often, the subdivision and land development aspects of a proposal are considered at the same time, in the same set of meetings.

¹⁰⁸ 53 P.S. 10107.

¹⁰⁹ 53 P.S. 10107.

Overview of the Process

Unlike other land use approval processes, the MPC contains relatively few requirements for the subdivision and land development approval process. Often, these requirements are contained in a municipality's SALDO instead.

The following is a typical process:

- Step 1: Municipal officials receive a subdivision and land development application. They review it to make sure it includes all plans and other components required by the SALDO. If the application is incomplete, the municipality will inform the applicant and request the missing components.
- Step 2: Once the application is deemed complete, it is placed on the agenda for an upcoming planning commission meeting.
- Step 3: Prior to the planning commission meeting, municipal officials send the application to the municipal engineer, who reviews that plans and other materials and issues a review letter. The **review letter** contains provision-by-provision comments about the proposal's compliance with the SALDO, stormwater management ordinance, and other relevant ordinances, as well as any other design or engineering issues the engineer identifies. The zoning officer and other municipal consultants may also review the application and issue review letters.
- Step 4: The planning commission meets to review the application. These meetings are often relatively informal, with the planning commission and developer working together to arrive at solutions to any issues with the proposed development. The conversation often focuses on addressing the concerns identified in the engineer's review letter. The public may make comment at this meeting.
- Step 5: If necessary, based on the discussion at the planning commission meeting, the developer may revise the plans and submit them for re-review, sometimes more than once. If this is the case, Steps 3 and 4 may repeat.
- Step 6: Once the planning commission completes its review, it will issue a recommendation letter to the governing body. The planning commission may recommend approval, denial, or approval with conditions.
- Step 7: The application is placed on the agenda for an upcoming meeting of the governing body. Although a governing body may hold a hearing, the MPC makes clear that public hearings are not required, and few municipalities conduct hearings for subdivision and land development applications.¹¹⁰ However, the governing body must hold a public meeting prior to voting to approve or deny the application.¹¹¹ See page 25 for more about the difference between public meetings and hearings.
- Step 8: Public meeting of the governing body. Most often, subdivision and land development applications are considered during regularly scheduled monthly meetings of the governing body, although in some instances, the governing body will schedule a separate meeting. Usually, the developer or a representative of the developer attends the meeting to present the proposal and answer questions by the governing body. The developer may, but is not required to, answer questions from the public. The governing body will hold a discussion similar to the discussion before the planning commission, and the public will have the opportunity to comment. At the end of the meeting or meetings, the governing body may vote to approve or deny the application. The governing body may also decline to vote immediately and continue the discussion at a future meeting, as long as that meeting is within the deadline for making a decision (see page 47).

¹¹⁰ *Miravich v. Twp. of Exeter*, 6 A.3d 1076, 1079 (Pa. Cmwlth. 2010) (citing 53 P.S. §10508(5)).

¹¹¹ 65 Pa. C.S. §§ 704.

You Should Know

The MPC calls subdivision and land development plans “plats.” This terminology is rarely used in practice.

Step 9: The governing body will vote at a public meeting to approve or deny the application and, within 15 days after the vote, it will issue a written decision.¹¹² If the application is denied, the governing body must explain the reason(s) for denial in the written decision.¹¹³ If it is approved, the governing body may include conditions to approval.

Preliminary vs. Final Subdivision and Land Development Plans

The MPC references both preliminary and final subdivision and land development plans but does not explicitly require or describe a multi-step process for approval.¹¹⁴ However, most SALDOs set forth a multi-step process in which developers first submit preliminary plans for initial review and approval and return for final approval at a later date. Where such a process is included in the SALDO, it should be followed. Often, SALDOs allow developers to choose between a multi-step approval process and a single-step approval process. When developers choose the latter, it may be referred to as “Preliminary/Final” approval.

Generally speaking, the two-step process affords some benefits to developers and municipalities because preliminary plan approval requires less specific information than final plan approval.¹¹⁵ Developers may choose to seek preliminary approval because it allows them to find out whether their proposed development will be approved, and under what conditions, before they invest significant time and expense in detailed design or in seeking permits and approvals from outside agencies like PennDOT and the Pennsylvania Department of Environmental Protection. Submitting preliminary plans also allows developers to “lock in” the applicable ordinances and avoid being affected by any ordinance amendments that may occur during the lengthy process of working out design details and pursuing outside agency permits. Often, the governing body will impose conditions on preliminary approval, and final land development approval involves submission of plans corrected to meet those conditions, as well as the preparation of additional plans where required by the SALDO or under the conditions to preliminary approval.¹¹⁶ A developer who has received preliminary approval is entitled to final approval as long as the plans presented for final approval are consistent with the approved preliminary plans and the terms of the approved preliminary application are satisfied.¹¹⁷ This means that final approval of a subdivision plan is automatic unless the final plan is different from the preliminary plan or the applicant fails to satisfy conditions imposed on the preliminary plan.¹¹⁸

Legal Standard for Approval

In reviewing an application for land development approval, the governing body’s objective is to determine whether the proposed plan complies with the SALDO. If the plan complies with all objective provisions of the SALDO, it must be approved. However, an application may be denied if it fails to meet a single, objective SALDO provision.¹¹⁹ This does not mean a governing body can deny an application for “trifling, over-technical” reasons.¹²⁰ For example, a governing body can deny a subdivision and land

¹¹² 53 P.S. § 10508.

¹¹³ 53 P.S. § 10508(2).

¹¹⁴ See 53 P.S. §§ 10503(1), 10508, 10508.

¹¹⁵ See *Tuscarora Forests, Inc. v. Fermanagh Bd. of Supervisors*, 471 A.2d 137, 138 (Pa. Cmwlth. 1984).

¹¹⁶ *Whitehall Manor, Inc. v. Planning Comm’n*, 79 A.3d 720, 734 (Pa. Cmwlth. 2013) (quoting Robert S. Ryan, PENNSYLVANIA ZONING LAW AND PRACTICE § 11.2.1 (2007 ed.).

¹¹⁷ 53 P.S. § 10508(4)(ii).

¹¹⁸ See *Graham v. Zoning Hearing Bd.*, 555 A.2d 79, 81 (Pa. 1989).

¹¹⁹ *In re Appeal of Provco Pinegood Sumneytown, LLC*, 216 A.3d 512, 525 (Pa. Cmwlth. 2019); *Robal Assocs. v. Bd. of Supervisors of Charlestown Twp.*, 999 A.2d 630, 635 (Pa. Cmwlth. 2010); *Herr v. Lancaster Cty. Planning Comm’n*, 625 A.2d 164, 172 (Pa. Cmwlth. 1993) (denial appropriate where a proposed plan contains “fundamental defects” that violate “objective, substantive provisions of a subdivision ordinance.”)

¹²⁰ *Robal Assocs. v. Bd. of Supervisors of Charlestown Twp.*, 999 A.2d 630, 635 (Pa. Cmwlth. 2010); *Raum v. Bd. of Supervisors*, 370 A.2d 777, 781 (Pa. Cmwlth. 1977).

development application for failing to comply with requirements for highway access or sewage disposal, but not for submitting a different sized plan drawing that what is required by the SALDO.¹²¹

Municipalities are not allowed to withhold approval of land development plans that conform to their SALDO.¹²² Therefore, any denial of a land development plan must be based on noncompliance with specific SALDO provisions, not “generalized concerns.”¹²³ (see page 9 and 46 for more about why land use decisions must be grounded in ordinances). A governing body also may not deny approval based on failure to obtain permits from outside agencies such as PennDOT or the Department of Environmental Protection prior to applying for land development approval. Where an outside agency’s approval is required but not yet obtained, the governing body may condition final approval upon obtaining the permit but cannot outright deny the application.¹²⁴

Conditions to Subdivision and Land Development Approval

If the governing body approves a subdivision and land development plan, it may impose conditions on the approval.¹²⁵ Conditions are requirements, beyond those that are contained in the SALDO, that the applicant must meet. Like conditions to conditional use/special exception approval (see page 52), conditions to subdivision and land development approval must be reasonable and aimed at achieving compliance with the SALDO and MPC.¹²⁶

SALDO Waivers

When considering a subdivision and land development application, the governing body also has the power to grant waivers from SALDO requirements.¹²⁷ A waiver is similar to a zoning variance in that it excuses the applicant from complying with a specific provision of the SALDO (see page 57 for more information of zoning variances). However, the legal standard is significantly different, and the two should not be confused with each other.

The standard for a SALDO waiver is less rigorous than what is required for a zoning variance, but this does not mean SALDO waivers must or should be granted in all circumstances.¹²⁸ In general, an applicant is entitled to a SALDO waiver if they demonstrate that having to comply with the SALDO would be either unreasonable or an undue hardship.¹²⁹ For example, a wind farm developer would be entitled to a waiver from a screening fence requirement because it would be unreasonable to expect anyone to build a fence

¹²¹ See *Robal Assocs. v. Bd. of Supervisors of Charlestown Twp.*, 999 A.2d 630, 636-37 (Pa. Cmwlth. 2010); *Shelbourne Square Assocs., L.P. v. Bd. of Supervisors*, 794 A.2d 946, 950 (Pa. Cmwlth. 2002).

¹²² *Montgomery Twp. v. Franchise Realty Interstate Corp.*, 422 A.2d 897, 899 (Pa. Cmwlth. 1980); *Twp. of Middle Smithfield v. Kessler*, 882 A.2d 17, 22 n.7 (Pa. Cmwlth. 2005).

¹²³ See *Morris v. S. Coventry Twp. Bd. of Supervisors*, 836 A.2d 1015, 1025 (Pa. Cmwlth. 2003).

¹²⁴ *Morris v. S. Coventry Twp. Bd. of Supervisors*, 836 A.2d 1015, 1025-26 (Pa. Cmwlth. 2003); *Bloom v. Lower Paxton Twp.*, 457 A.2d 166, 169 (Pa. Cmwlth. 1983). However, “attaching a ‘condition’ that [an applicant] must have approvals as required by law is in a sense not a ‘condition that the municipality imposes because it has no discretion to change or waive that requirement.’” *Lyons Borough v. Twp. of Maxatawny*, 123 A.3d 347, 353 (Pa. Cmwlth. 2015).

¹²⁵ *Joos v. Bd. of Supervisors of Charlestown Twp.*, 237 A.3d 624, 629-31 (Pa. Cmwlth. 2020) (citing 53 P.S. §§ 10503(9)).

¹²⁶ *Stauffer v. Weisenberg Twp. Bd. of Supervisors*, 934 A.2d 783, 787 n.5 (Pa. Cmwlth. 2007); *Montgomery Twp. v. Franchise Realty Interstate Corp.*, 422 A.2d 897, 899 (Pa. Cmwlth. 1980); *Bethel Park Minimall, Inc. v. Bethel Park*, 326 A.2d 670, 672 (Pa. Cmwlth. 1974).

¹²⁷ 53 P.S. §§ 10512.1, 10503(8).

¹²⁸ *Telvil Constr. Corp. v. Zoning Hearing Bd.*, 896 A.2d 651, 656 n.7 (Pa. Cmwlth. 2006).

¹²⁹ 53 P.S. § 10512.1; Despite the fact that that MPC Section 512.1(a) refers only to “undue hardship because of peculiar conditions pertaining to the land in question,” courts interpret subsection (b) as authorizing waiver in the event of “unreasonableness” as well. See *Valenti v. Wash. Twp.*, 737 A.2d 346, 347-48 (Pa. Cmwlth. 1999) (interpreting ordinance with identical language); *Brandywine Vill. Assocs., LP v. E. Brandywine Twp. Bd. of Super’s*, 499 C.D. 2020, 2021 Pa. Commw. Unpub. LEXIS 389 at *10-11 (Pa. Cmwlth. 2021) (unreported decision) (same). Courts have also interpreted the use of the disjunctive “or” to mean that an applicant may show entitlement to a waiver by showing either unreasonableness or undue hardship. *Concerned Citizens of Ross Township v. Ross Township. Concerned Citizens of Ross Twp. v. Ross Twp.*, No. 1301 C.D. 2020, 2022 Pa. Commw. Unpub. LEXIS 389 at *15 (Pa. Cmwlth. Sept. 13, 2022) (unreported decision) (language allows for modification in the event of undue hardship or unreasonableness”) (emphasis in original); *In re Appeal of the J.W. McGrath Org.*, 2010 Pa. Commw. Unpub. LEXIS 809, at *12 (Cmwlth. Dec. 1, 2010) (unreported decision) (interpreting identical SALDO language).

tall enough to effectively screen the wind turbines.¹³⁰ The waiver must also be the minimum modification necessary, and it cannot be contrary to the public interest or the purpose and intent of the SALDO.¹³¹ An applicant may demonstrate that the waiver request is consistent with the public interest and the intent and purpose of the SALDO by showing that the proposed subdivision or land development offers a substantial equivalent to a subdivision requirement, an additional requirement would offer little or no additional benefit, and the literal enforcement of a requirement would frustrate the effect of improvements.¹³²

TIPS FOR PARTICIPATING IN THE SUBDIVISION AND LAND DEVELOPMENT APPROVAL PROCESS:

- If you become aware of a proposed land development, obtain a copy of the land development application from the municipality prior to the meeting. This can be done by calling, emailing, or visiting the municipal office. You may have to submit a Right to Know Law request (see page 43).
- Review the SALDO before attending the meeting. If there are aspects of the proposal that particularly concern you, e.g., traffic, stormwater management, lighting, noise, etc., familiarize yourself with relevant provisions. See Appendix B for tips for how to read an ordinance. You may want to print out these portions of the ordinance and bring them to the meeting.
- Note any ways in which you believe the proposed development does not comply with the SALDO.
- At the meeting, listen to the applicant's presentation and observe any plans submitted. Make note of any statements that are relevant to the SALDO provisions you flagged.
- If the planning commission or board of supervisors allows, ask clarifying questions about any points you do not understand. Remember, the decision-making body and developer are not required to take or answer questions at these meetings, but often choose to do so.
- If making public comment, focus on points where you believe the proposal does not comply with the SALDO rather than simply expressing your personal approval or disapproval of the proposal. While public opinion is important, ultimately, the governing body cannot base a decision on public opinion alone if not rooted in the SALDO.
- Consider conditions you would like to see if the application is granted and propose them to the planning commission or governing body. Be prepared to state how the proposed condition relates to something in the SALDO. Even if an issue or concern does not justify outright denial of subdivision or land development approval, it may be enough to justify a condition to lessen the impact.

¹³⁰ *Tioga Pres. Grp. v. Tioga Cty. Planning Comm'n*, 970 A.2d 1200, 1205 (Pa. Cmwlth. 2009).

¹³¹ 53 P.S. § 10512.1(b).

¹³² *Whitehall Manor, Inc. v. Planning Comm'n*, 79 A.3d 720, 735 (Pa. Cmwlth. 2013) (quoting *Monroe Meadows Hous. P'ship, LP v. Mun. Council*, 926 A.2d 548, 553 (Pa. Cmwlth. 2007)).

FACT SHEET: APPEAL OF ZONING OFFICER'S DETERMINATION

| FAST FACTS | |
|--|--|
| Decision-making body | ZHB |
| Type of proceeding | Hearing |
| Opportunities for participation | Participate as a party (see page 35) or make public comment (see page 33) at the ZHB hearing |
| Where to find info | In a newspaper of general circulation, between 30 and 7 days prior to the hearing. |

What is an Appeal of a Zoning Officer's Determination?

The zoning officer is a municipal employee responsible for making certain “determinations.” For example, the zoning officer decides whether a proposed use is entitled to a zoning permit (if no conditional use or special exception hearing is required) and when to issue citations or “notices of violation” to persons who violate the zoning ordinance. See page 24 for more information about the role of the zoning officer.

If the landowner or another person directly impacted by the zoning officer's determination disagrees with that determination, they can request that the ZHB review the decision.¹³³ This is called an appeal of the zoning officer's determination.

Overview of the Process

The process for an appeal of a zoning officer's determination is relatively straightforward: The person who disagrees with the zoning officer's determination files an appeal, and the ZHB schedules a hearing. The ZHB will listen to the evidence presented at the hearing and decide whether the zoning officer's determination was correct. Hearings of this nature are usually relatively short, but more complex matters may take more than one hearing.

Legal Standard

The question in an appeal of a zoning officer's determination is whether the zoning officer correctly interpreted the zoning ordinance and correctly applied it to the subject property. For example, if the zoning officer issues a notice of violation to a landowner for operating a junkyard in a zoning district where a junkyard is not permitted, the question before the ZHB on appeal will be whether the landowner is operating a junkyard as defined in the zoning ordinance and whether it is in fact prohibited on the landowner's property.

In making its decision, the ZHB must consider all relevant evidence offered at the hearing, even if it includes information the zoning officer did not have when making the initial determination.¹³⁴ If the appeal is an appeal of a notice of violation, the municipality must present evidence of the violation before

¹³³ *Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, 186 A.3d 525, 533 (Pa. Cmwlth. 2018).

¹³⁴ *Bethlehem Manor Vill., LLC v. Zoning Hearing Bd.*, 251 A.3d 448, 461 (Pa. Cmwlth. 2021).

the landowner is required to produce evidence to refute it.¹³⁵ The ZHB may also decide new issues if they are brought up by one of the parties, but it cannot decide any issues that haven't been addressed at the hearing.¹³⁶

Often, when a zoning officer's determination prevents a landowner from using or developing land as they wish, the landowner will appeal the zoning officer's determination and request a variance as part of the same appeal.

TIPS FOR PARTICIPATING IN AN APPEAL FROM A ZONING OFFICER'S DETERMINATION:

- Obtain a copy of the zoning officer's determination, the appeal, and any accompanying documents from the municipality prior to the hearing. This can be done by calling, emailing, or visiting the municipal office. You may have to submit a Right to Know Law request (see page 43).
- Review the zoning officer's determination and the appeal to get an understanding of where the disagreement between the zoning officer and the appellant lies. Review the zoning ordinance to identify applicable provisions. The relevant zoning ordinance provisions will likely be referenced in the zoning officer's determination and/or the appeal.
- At the hearing, listen to any witness testimony presented by the zoning officer, the appellant, and any other party and identify facts that are relevant to deciding the issue at hand. What is and is not relevant varies greatly, depending on the nature of the zoning officer's determination and the basis on which it was made.
- If you are directly affected by the zoning officer's determination (e.g., live on a neighboring property), consider becoming a party and presenting evidence to either support or oppose the appeal. The zoning officer and the ZHB are not able to constantly monitor all properties, so neighbors' evidence is often useful when the issue being decided revolves around how a property is being used. Written records of activities on a property, testimony, photographs, and videos can all be useful. Remember not to trespass when gathering evidence.
- When making arguments (whether in briefs or in person) or public comment, focus on the issues being decided rather than simply expressing your personal approval or disapproval of the land use or the landowner.

¹³⁵ *Hartner v. Zoning Hearing Bd.*, 840 A.2d 1068, 1070 (Pa. Cmwlth. 2004).

¹³⁶ *Bethlehem Manor Vill., LLC v. Zoning Hearing Bd.*, 251 A.3d 448, 461 (Pa. Cmwlth. 2021).

FACT SHEET: PLANNED RESIDENTIAL DEVELOPMENT APPLICATION

| FAST FACTS | |
|--|---|
| Decision-making body | Governing body of the municipality |
| Type of proceeding | Hearing |
| Opportunities for participation | Make public comment at planning commission meeting and/or meeting of the governing body (see page 33). Participate as a party at the public hearing (see page 35). |
| Where to find info | In a newspaper of general circulation, between 30 and 7 days prior to the hearing. ¹³⁷ |

What is Planned Residential Development?

A planned residential development (“PRD”) is a distinct kind of land development where a single developer develops a large area for a number of dwelling units or a combination of residential and non-residential uses according to special rules that do not apply to other types of development in the same zoning district. These special rules are usually found in a separate section of the zoning ordinance and replace the zoning and subdivision ordinances otherwise applicable in the relevant zoning district if the developer chooses to apply them.¹³⁸ The idea behind PRD zoning is to create a method of approving large developments which overrides traditional zoning controls and allows flexibility in the design of larger developments.¹³⁹ Many PRDs are developed in phases, with different portions of the plan being developed at different times. There may be months or even years between development of different phases.

Overview of the Process

PRDs follow a unique approval process that encompasses all the zoning and subdivision and land development decisions in one set of hearings.¹⁴⁰ A chart outlining the process is on the following page.

Legal Standard

The issue in a PRD hearing is whether the PRD complies with the PRD ordinance. Remember, the PRD ordinance replaces the zoning and SALDO ordinances for the proposed PRD, so a developer that chooses to proceed under the PRD ordinance does not have to prove that the development complies with the “regular” zoning or SALDO ordinances. “It is the very essence of a planned residential development that it may diverge from zoning requirements.”¹⁴¹

As with subdivision and land development approval (see page 61), a PRD may be denied if it fails to satisfy a single, objective, substantive (i.e. not overly technical) provision of the PRD ordinance.¹⁴² For example, a PRD may be denied if it fails to comply with requirements for minimum open space, lot area, stormwater, grading, sewage and wastewater disposal, wetland delineation, highway access, roadway

¹³⁷ 53 P.S. § 10708(a).

¹³⁸ 53 P.S. § 10711(d); *Kang v. Supervisors of Spring @ Spring Ridge Land Dev. Co.*, 776 A.2d 324, 328 (Pa. Cmwlth. 2001).

¹³⁹ *Kang v. Supervisors of Twp. of Spring*, 776 A.2d 324, 328 (Pa. Cmwlth. 2001).

¹⁴⁰ 53 P.S. § 10707(d).

¹⁴¹ *Michaels Dev. Co. v. Benzinger Twp. Bd. of Super's*, 413 A.2d 743, 747 (Pa. Cmwlth. 1980).

¹⁴² *Robal Assocs. v. Bd. of Supervisors of Charlestown Twp.*, 999 A.2d 630, 635 (Pa. Cmwlth. 2010).

grading, or erosion and sedimentation control, but cannot be denied simply because it fails to meet technical requirements such as the size or content of drawings.¹⁴³

In theory, the governing body may reject a PRD, even if it fully complies with the PRD ordinance, if the governing body finds “substantial, specific, and exceptional” reasons why the proposal is contrary to the public health, safety and welfare.¹⁴⁴ However, courts have found such exceptional reasons for denial to exist only once in the past forty years.¹⁴⁵

Participants should also be aware that tentative plan approval (see chart below) is the critical step in the PRD process.¹⁴⁶ This is when nearly all of the decisions about the proposal are made. A municipality’s authority to deny approval at the final plan stage is limited to instances where the final plan deviates from the tentative plan.¹⁴⁷ Therefore, residents’ efforts are best concentrated at the tentative approval stage.

TIPS FOR PARTICIPATING IN THE PRD APPROVAL PROCESS:

- If you become aware of a proposed PRD in advance of the public hearing, obtain a copy of the PRD application from the municipality prior to the meeting. This can be done by calling, emailing, or visiting the municipal office. You may have to submit a Right to Know Law request (see page 43). You can also obtain these documents at a later point if you are not able to obtain them before the meeting.
- Review the PRD ordinance before attending the hearing. If there are aspects of the proposal that particularly concern you, e.g., traffic, stormwater management, lighting, noise, etc., familiarize yourself with relevant provisions. See Appendix B for tips for reading an ordinance. Consider printing out these portions of the ordinance and bringing them to the meeting.
- Note any ways in which you believe the proposed development does not comply with the PRD ordinance.
- At the hearing, listen to the witness testimony and observe the plans presented by the applicant. Make note of any statements that are relevant to the PRD provisions you flagged.
- If you are a party, ask clarifying questions during cross-examination if any of the witnesses’ testimony on these points is unclear. See page 36 for more tips for cross-examining witnesses.
- If you are a party, to the extent possible, present evidence showing that the proposed use does not comply with the PRD ordinance or that there are substantial, specific, and exceptional reasons why the proposal is contrary to the public health, safety, and welfare.
- When making arguments (whether in briefs or in person) or public comment, focus on the points discussed above. Showing that the use does not comply with the PRD ordinance or that it will create an unacceptable detrimental impact is more effective than stating that “no one wants this here.”
- Consider conditions you would like to see if the application is approved and propose them to the decision-making body. Be prepared to state how the proposed condition relates to something in the zoning ordinance. Often, even if an issue or concern does not justify denying an application outright, it may be enough to justify a condition to lessen the impact.

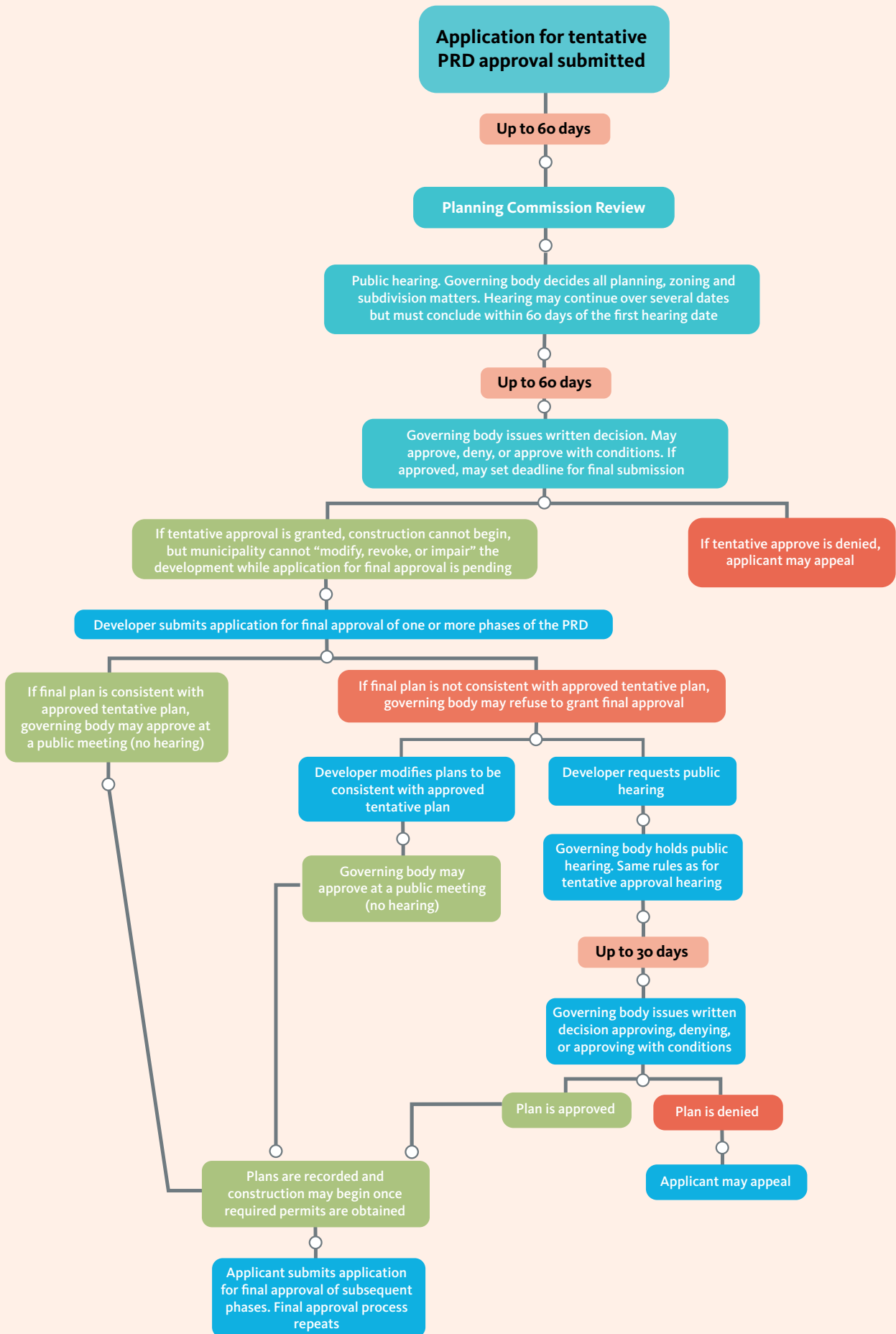
¹⁴³ *Robal Assocs. v. Bd. of Supervisors of Charlestown Twp.*, 999 A.2d 630, 636–37 (Pa. Cmwlth. 2010).

¹⁴⁴ See *Reeves Family Real Estate, L.P. v. Bd. of Supervisors*, 273 A.3d 1277 (Pa. Cmwlth. 2022); *In re Appeal of Molnar*, 441 A.2d 487, 491 (Pa. Cmwlth. 1982); *Doran Inv. v. Muhlenberg Township*, 309 A.2d 450, 459 (Pa. Cmwlth. 1973).

¹⁴⁵ See *Reeves Family Real Estate, L.P. v. Bd. of Supervisors*, 273 A.3d 1277 (Pa. Cmwlth. 2022).

¹⁴⁶ *Pennypacker v. Ferguson Twp.*, 167 A.3d 209, 212 (Pa. Cmwlth. 2017).

¹⁴⁷ *Pennypacker v. Ferguson Twp.*, 167 A.3d 209, 212 (Pa. Cmwlth. 2017).



FACT SHEET: SUBSTANTIVE VALIDITY OR CURATIVE AMENDMENT CHALLENGE

| FAST FACTS | |
|--|---|
| Decision-making body | ZHB (substantive validity challenge); governing body of the municipality (curative amendment) |
| Type of proceeding | Hearing |
| Opportunities for participation | Make public comment at hearing (see page 33). Participate as a party at the public hearing (see page 35). |
| Where to find info | In a newspaper of general circulation, between 30 and 7 days prior to the hearing. ¹⁴⁸ |

What are Substantive Validity and Curative Amendment Challenges?

A substantive validity challenge is a type of legal challenge in which a landowner or other person claims that a land use ordinance is invalid and must be nullified. As the name implies, a substantive validity challenge is based on the substance or content of the ordinance. This differs from a procedural challenge, in which a person claims that an ordinance is invalid because the municipality did not follow the correct procedure in adopting it. Procedural challenges are brought in court, not before a local decision-making body.

The substance of an ordinance may be invalid for a number of reasons. The ordinance may be invalid because it is unduly restrictive or **exclusionary** (see below for more information about exclusionary zoning).¹⁴⁹ It also may be invalid if it treats similar landowners differently without a reasonable basis, if it is preempted by state or federal law, or if the municipality lacked the authority to enact it.¹⁵⁰

A curative amendment challenge is similar to a substantive validity challenge in that it challenges the validity of the ordinance. It is different in that the **challenger** must also file a) a proposed amendment to the ordinance that fixes or “cures” the supposed problem (known as the “curative amendment”); and b) plans for a use or development of the land that the challenger wishes to go forward with but cannot accomplish under the existing ordinance.

Overview of process

Substantive validity challenges can be brought by persons whose use or development of land is affected by the challenged ordinance and by persons who are not themselves proposing a land use or development but who are otherwise affected by the ordinance. Substantive validity challenges are decided by the ZHB.

¹⁴⁸ 53 P.S. §§ 10609.1(b); 10908(1).

¹⁴⁹ *C&M Developers v. Bedminster Twp. Zoning Hearing Bd.*, 573 Pa. 2, 15, 820 A.2d 143, 151 (2002).

¹⁵⁰ *C&M Developers v. Bedminster Twp. Zoning Hearing Bd.*, 573 Pa. 2, 15, 820 A.2d 143, 151 (2002); see *In re Appeal of Penneco Envtl. Sols., LLC*, 205 A.3d 401, 403 (Pa. Cmwlth. 2019); *Holsten v. W. Goshen Twp.*, 424 A.2d 997, 998 (Pa. Cmwlth. 1981) (citing *McArthur v. Mt. Lebanon Twp.*, 165 A.2d 630 (Pa. 1960)).

Curative amendment challenges can only be brought by a landowner whose use or development of land is affected by the challenged ordinance. Curative amendment challenges are decided by the governing body.

In either type of challenge, the decision-making body will hold a hearing to decide whether the ordinance is invalid. If the decision-making body rejects the challenge (i.e., decides that the ordinance is valid), nothing will change, and the ordinance will stay in effect. If the decision-making body decides that the ordinance is invalid, what happens next depends on the type of challenge and the decision-making body:

1. Substantive validity challenge. If the ZHB determines that the challenged ordinance is invalid, it will suggest a curative amendment to the governing body.
2. Curative amendment challenge. If the governing body determines that the ordinance is invalid, it must amend the ordinance to “cure” the problem. The governing body may adopt the challenger’s suggested curative amendment or draft its own alternative. The governing body must also decide what relief to grant the challenger. This is discussed below.

Legal Standard

The main issue in a substantive validity challenge or curative amendment challenge is whether the challenged ordinance is invalid for the reasons that the challenger says it is. Because there are many reasons why an ordinance may be invalid, the specific legal standard depends on the basis for the supposed invalidity.

The most common type of substantive validity/curative amendment challenge is an exclusionary zoning challenge. Under Pennsylvania law, a municipality generally cannot exclude or “zone out” any legitimate land use by completely prohibiting it everywhere in the municipality. An exclusionary zoning challenge claims a zoning ordinance is invalid because it violates this rule. An ordinance is exclusionary if it totally bans a legitimate use by, for example, listing all the uses that are allowed in the municipality and leaving a particular use off the list or by simply not provided for a use anywhere in the municipality. An ordinance is also exclusionary if it allows a use but restricts it in such a way that it is impossible to actually develop it. For example, an ordinance that permits warehouses in only one zoning district would be exclusionary if it required all warehouse uses to be located within 500 feet of an entrance to an expressway and there were no properties in that zoning district that could meet that requirement.

If the challenger proves that the ordinance is exclusionary, the municipality must demonstrate that there are substantial public health, safety and welfare concerns that justify excluding the use from the municipality. If the municipality cannot prove this, (as is almost always the case) the ordinance is invalid. Because the governing body acts as the decision-making body in a curative amendment challenge, it must remain neutral and cannot take the role of defending the ordinance. The municipal solicitor also cannot defend the ordinance because the solicitor’s role at the hearing is to give the governing body unbiased advice. Therefore, the municipality will usually hire an independent attorney, called a “special counsel” to defend the ordinance during the hearing.

In a curative amendment challenge, the successful challenger is entitled to what is called **site-specific relief**. This means that the challenger must be permitted “to develop his land as proposed in the plans and other materials submitted with the challenge.”¹⁵¹ This right is not unlimited, though. The plans must

¹⁵¹ *Ellick v. Bd. of Supervisors*, 333 A.2d 239, 244 (Pa. Cmwlth. 1975).

be “reasonable and not injurious to the public health, safety, welfare and morals”¹⁵² and must comply with all other unchallenged ordinances in effect on the date the challenge was brought.¹⁵³

TIPS FOR PARTICIPATING IN A SUBSTANTIVE VALIDITY OR CURATIVE AMENDMENT CHALLENGE:

- If you become aware of a proposed substantive validity challenge or curative amendment challenge in advance of the public hearing, obtain a copy of the challenge from the municipality prior to the meeting. This can be done by calling, emailing, or visiting the municipal office. You may have to submit a Right to Know Law request (see page 43). You can also obtain these documents at a later point if you are not able to obtain them before the meeting.
- Familiarize yourself with the reasons why the challenger claims the ordinance is invalid.
- Remember that the first issue at a curative amendment hearing, and the only issue at a substantive validity hearing, is whether the ordinance is invalid, not whether the proposed development should be allowed.
- Only if the governing body finds that the ordinance is invalid will it consider site specific relief. In that case, consider offering testimony or public comment on the public health, safety, and welfare impacts of the proposed use. Factors that the municipality must consider include:
 - The impact of the proposal upon roads, sewer facilities, water supplies, schools, and other public facilities;
 - If the proposal is for a residential use, the impact upon regional housing needs;
 - the impact on, and the suitability of the site for the proposed use, with respect to soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources, and other natural features; and
 - the impact on the proposal for the preservation of agriculture and other land uses that are essential to public health and welfare.¹⁵⁴

¹⁵² *J.B. Steven, Inc. v. Bd. of Comm’rs*, 654 A.2d 135, 139 (Pa. Cmwlth. 1995).

¹⁵³ *Bloomsburg Indus. Ventures, LLC v. Town of Bloomsburg*, 242 A.3d 969, 983 (Pa. Cmwlth. 2020); *J.B. Steven, Inc. v. Bd. of Comm’rs*, 654 A.2d 135, 139 (Pa. Cmwlth. 1995).

¹⁵⁴ 53 P.S. § 10609.1(c).

APPENDIX A – GLOSSARY

For purposes of the Sunshine Act, an **agency** is any government body that can take official action or render advice on matters of agency business. It includes all decision-making bodies discussed in this guidebook as well as all other municipal boards, councils, authorities, and commissions.

An **agenda** is a list of topics to be discussed at a meeting. Typically, agendas only give a very brief description of each topic.

An **appeal** is the legal process of asking a higher court or decision-making body to review the decision of a lower official or decision-making body because the person bringing the appeal believes the lower body made a mistake. Appeals of determinations of a zoning officer are brought before the ZHB. Appeals of decisions by governing bodies and ZHBs are brought before the Court of Common Pleas.

An **applicant** is a person or business entity that submits an application for land use approval.

An **application** is a formal request to a decision-making body to approve a requested use or development of land.

A **brief** is a written argument in support of a party's position in a legal matter.

By-right use: See **permitted use**

The **chair** of a decision-making body runs the body's meetings and/or hearings and may have other specific duties.

A **challenger** is a party who challenges an ordinance or other official action. In the context of this guidebook, it refers to a person who brings a substantive validity challenge or a curative amendment challenge.

A **community association** is a nongovernmental group of elected residents that creates and enforces rules for a particular housing community. Homeowners' associations (HOAs) and condominium associations are types of community associations. In addition to creating and enforcing community rules, community associations may manage common or shared property within the community, provide services such as road maintenance, trash pickup, and security, and provide activities for residents.

A **comprehensive plan** is a document consisting of maps, charts, and text that contains a statement of a municipality's objectives concerning its future development. Comprehensive plans describe where land development and infrastructure should occur in the future to allow for population growth while also protecting the environment, agricultural resources, historical resources, and the existing character of the community. Each county in must prepare and adopt a comprehensive plan. Municipalities may, but are not required to, prepare and adopt comprehensive plans. A municipality may draft its own comprehensive plan, or it may join with other neighboring municipalities to create a multimunicipal comprehensive plan. Comprehensive plans are not laws and do not contain specific requirements that applicants for land use approval must satisfy.

In the land use context, a **condition** is a requirement, beyond the requirements of a land use ordinance, that the applicant must meet to be granted a land use approval. Conditions are specific to the individual application and are usually contained in the decision-making body's written decision. If the applicant does not meet the conditions, the decision-making body can revoke the approval, or treat it as a violation of the zoning ordinance or SALDO.

A **conditional use** is a land use that requires zoning approval from the governing body of the municipality.

Municipal **consultants** are professionals who are not directly employed by the municipality but who are appointed to provide professional advice when needed. Consultants may include attorneys (solicitors), civil engineers, traffic engineers, and planners.

APPENDIX A – GLOSSARY CONT.

The **Court of Common Pleas** is the county-level court in Pennsylvania. Almost every county has its own Court of Common Pleas.¹⁵⁵

Cross-examination is the process of questioning a witness that is presented by another party.

A **curative amendment challenge** is a type of legal challenge in which a landowner or other person claims that a land use ordinance is invalid and must be nullified. The challenger must also file a) a proposed amendment to the ordinance that fixes or “cures” the supposed problem (known as the “curative amendment”); and b) plans for a use or development of the land that they wish to go forward with but cannot accomplish under the existing ordinance.

For purposes of this guidebook, **decision-making body** may refer to any municipal body responsible for making a land use decision or a recommendation on a land use decision. Depending on the type of decision, the decision-making body may be the governing body, the ZHB, or the planning commission.

Direct examination occurs when a party questions its own witness at a trial or hearing.

District. See **zoning district**.

Examination is the formal questioning of a witness under oath during a hearing or trial.

Exclusionary zoning occurs when a municipality’s zoning ordinance does not allow for a legitimate land use anywhere in the municipality. Exclusionary zoning is almost always unconstitutional.

An **executive session** or closed meeting is a meeting of a decision-making body held outside of the view of the public. The Sunshine Act allows decision-making bodies to discuss certain matters in executive session.

An **exhibit** is any document or object offered to, and accepted by, a decision-making body as evidence at a hearing.

The **General Assembly** is Pennsylvania’s legislative body. It consists of a Senate with 50 members and a House of Representatives with 203 members. The General Assembly passes statewide laws called statutes.

The **governing body** of a municipality is the group of elected officials that passes ordinances and governs the general business of the municipality. What the governing body is called depends on the type of municipality. The governing body of a city is called the city council. The governing body of a borough is called the borough council. The governing body of a township is called either the board of supervisors or the board of commissioners.

Hearing. See **public hearing**.

An **impervious surface** is one that water and other liquids cannot pass through. Buildings, concrete, and blacktop are impervious surfaces.

Improvements are permanent additions or modifications to land such as buildings, roads, and utilities. In the land use context, the term does not necessarily mean that the modifications increase the site’s aesthetic or monetary value.

An **intervenor** is a party who participates in a lawsuit who was not named as an original party but has a personal stake in the outcome.

¹⁵⁵ Elk County and Cameron County share a Court of Common Pleas, as do Juniata County and Perry County, Columbia County and Montour County, Warren County and Forest County, Franklin County and Fulton County, Snyder County and Union County, and Wyoming County and Sullivan County.

APPENDIX A – GLOSSARY CONT.

Jurisdiction refers to the extent of a decision-making body’s official power to make legal decisions and judgments. All decision-making bodies have jurisdiction over some matters but not others and can only make decisions within their jurisdiction.

Land development generally refers to the construction of improvements on land. Certain types of development such as construction of residential buildings may be excluded from this definition under the MPC or a municipality’s SALDO.

Land use can refer generally to the human use of land for any purpose, including agricultural, residential, industrial, commercial, and recreational activities (“The zoning ordinance controls land use within a municipality”). The phrase can also be used to refer to a specific activity occurring on a particular parcel of land, such as a residence, retail store, manufacturing plant, farm, park, or quarry. In the latter case, sometimes just the word “use” is used. (“The landowner wishes to convert his property from a restaurant use to a nightclub use.”)

The **legal standard** is the law that the decision-making body must apply when making its decision. Legal standards may come from the MPC, ordinances, caselaw, or a combination of some or all of these.

Meeting. See **public meeting**.

The **minutes** of a meeting are a summary of the events of the meeting, but not word-for-word records.

A **model ordinance** is an example or template of an ordinance that provides suggested language that individual municipalities can adopt as their own. Model ordinances are often created by nonprofit organizations, educational institutions, and state, county, or regional planning agencies.

MPC. See **Pennsylvania Municipalities Planning Code**.

A **municipality** is a local government. In Pennsylvania, the three types of municipalities are townships, boroughs, and cities (and one town – Bloomsburg).¹⁵⁶ “Municipality” may refer to the government of the municipality (“Municipalities have the power to enact zoning ordinances”) or to the land within its boundaries (“The municipality is divided into seven zoning districts”).

A **newspaper of general circulation** can be any newspaper that is published once a week or more, intended for general distribution and circulation, and sold at a fixed price to subscribers regardless of business, trade, profession, or class.

A **nonconforming** use/lot/structure is a use/lot/structure that does not comply with the existing zoning ordinance but was in existence prior to the enactment of the ordinance. Nonconforming uses are generally permitted to continue as long as they are not changed or expanded beyond limits specified in the MPC and the zoning ordinance.

An **objection** at a hearing or trial is a formal protest raised by a party or attorney asserting that another party has made or is about to make an error contrary to the rules governing the proceeding.

Open Meetings Law. See **Pennsylvania Sunshine Act**.

An **ordinance** is legislation enacted by a municipality, i.e., a local law. It applies only within the municipality that enacted it.

¹⁵⁶ Although counties are sometimes included in the definition of municipality, the term is used in this Guidebook to refer only to local governments.

APPENDIX A – GLOSSARY CONT.

At a land use hearing, a **party** is a person who meets certain requirements and has certain rights at the hearing that are not shared by non-parties. These include the right to cross-examine witnesses, present evidence, and appeal the final decision. Being a party is sometimes called having party status.

A **permitted use** is a land use that can be approved by the zoning officer without a public hearing or approval by the governing body or ZHB.

The **Pennsylvania Municipalities Planning Code** or **MPC** is the statute that gives municipalities the power to plan and regulate land use. It was enacted in 1968 and has been amended many times. It sets forth the permissible content of land use ordinances and the powers and duties of local bodies with respect to land use decision-making processes. It applies to all municipalities in Pennsylvania except Philadelphia and Pittsburgh, which have their own separate, but similar, legislation.

A **planned residential development** or **PRD** is an area of land to be developed as a single entity for a number of dwelling units, or combination of residential and nonresidential uses, the development plan for which does not correspond in lot size, bulk, type of dwelling, or use, density, or intensity, lot coverage and required open space to the regulations established in any one district under the provisions of the zoning ordinance.

A **planning commission** is a body of three to nine volunteer residents of a municipality who are appointed by the governing body to advise the governing body on matters relating to land use and development. In most municipalities, the planning commission serves in a purely advisory role and does not have power to grant or deny any land use application.

The **police power** refers to municipalities' authority to pass laws and govern for the benefit of the general health, safety, and welfare of the community. It does not necessarily refer to a police force or police officers.

An ordinance is **preempted** if there is a "higher" law such as a state or federal law that prohibits the local regulation. Preemption can occur if the higher law directly prohibits local regulation on the topic, if the local regulation imposes requirements that conflict with a higher law, or if the state or federal regulation of the matter is so extensive that there is no place for local regulation on the topic (e.g., regulation of liquor licenses).

Proceeding is a catchall term for any type of legal process in which a decision-making body or decision-making individual makes a decision according to the law. Trials, hearings, and public meetings are all types of proceedings.

A **public hearing** is a formal proceeding at which a decision-making body hears testimony and considers evidence presented by an applicant and other parties before making a land use decision.

A **public meeting** is a formal meeting held by the governing body, planning commission or ZHB in accordance with the Sunshine Act for the purpose of informing and obtaining public comment prior to taking official action.

For purposes of the Right to Know Law, a **record** is any information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received, or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically, and a data processed or image-processed document.

A **resolution** is an official statement of the will of the governing body. Unlike ordinances, resolutions typically do not impose requirements on persons other than the governing body.

APPENDIX A – GLOSSARY CONT.

A **review letter** is a document prepared by a municipal official or consultant, usually an engineer, containing that consultant's review of a land use application. Review letters usually contain a provision-by-provision list of ordinance requirements that apply to the application and the consultant's opinion as to whether each requirement is met. If the consultant believes that a requirement is not met, the review letter will normally contain directions to the applicant as to what must be done to satisfy the requirement. A review letter may also note other design or engineering issues that the consultant identifies.

The **Right to Know Law** or **RTKL** is a Pennsylvania statute that gives persons the right to access certain public records, subject to limitations.

A **setback** is an area, measured from a property line, where the zoning ordinance does not allow structures or other improvements to be built. For example, if the zoning ordinance requires a 50-foot rear setback, no structures or other improvements can be built within 50 feet of the rear lot line of a property.

A person who succeeds in a curative amendment challenge is entitled to what is called **site-specific relief**. This means that the challenger must be permitted to develop his land as proposed in the plans and other materials submitted with the challenge, subject to certain limitations.

A **solicitor** is an attorney who represents and provides legal advice to a municipal body such as the governing body or the ZHB.

A **special exception** is a land use that requires zoning approval from the ZHB.

A **statute** is a law passed by Congress or a state legislature such as Pennsylvania's General Assembly. Statutes passed by Congress apply across the United States. Statutes passed by a state legislature apply only in that state. Statutes are often referred to as "Acts," for example, the Pennsylvania Sunshine Act.

The Pennsylvania **Sunshine Act**, also known as the Open Meetings Law, is a state statute that requires agencies to deliberate and take official action at open public meetings. It requires that there be prior notice of meetings and that the public be permitted to attend, participate, and comment before an agency takes official action.

Subdivision refers to dividing a parcel into two or more lots, or adjusting existing lot lines, regardless of whether anything is built on the lots. It can also refer to combining two or more lots into a single parcel.

A **subdivision and land development ordinance** or **SALDO** is a local ordinance that sets forth provisions for the submittal, processing, and approval of applications for subdivision and land development. Generally, a SALDO specifies the plans and studies that a land developer seeking approval must submit to the municipality and requirements that the plan must meet in order to be approved. These may include requirements pertaining to building and street layout, stormwater management, sewage treatment, lighting, landscaping, and parking.

The **subject property** is the property that is the subject of an application or other matter being considered by a decision-making body.

A **substantive validity challenge** is a type of legal challenge in which a landowner or other person claims that a land use ordinance is invalid and must be nullified. Unlike a curative amendment challenge, a party who brings a substantive validity challenge is not required to propose a curative amendment or submit plans for development.

APPENDIX A – GLOSSARY CONT.

Voir dire (pronounced vwa-DEER) is French for “to speak the truth.” It is the process through which a potential expert witness is questioned about their qualifications as an expert. In a trial, this can also refer to the process through which potential jurors are questioned to determine their suitability for jury service.

Testimony refers to oral statements made by a witness under oath during a hearing or trial.

A **transcript** is a word-for-word written record of what was said at a hearing.

A **variance** exempts a landowner from complying with a specific provision of a zoning ordinance. A use variance is a variance from a provision limiting the use of a property. A dimensional variance is a variance from a provision relating to the dimensions of the property or the structures on the property, such minimum lot size, setback, or building height.

A **waiver** excuses an applicant from complying with a specific provision of the SALDO. The MPC refers to waivers as “modifications,” but this terminology is rarely used in practice.

A **witness** is a person who testifies under oath at a hearing or trial about facts or opinions relevant to the matter being decided.

A **work session** is a public meeting of a governing body at which the governing body considers and discusses a single topic or limited number of topics in more depth than at a regular business meeting. Work sessions are for discussion only; the governing body does not vote at work sessions.

A **zoning district** is an area of a municipality in which the same set of zoning regulations applies to all properties. Most municipalities have multiple zoning districts, each with a separate set of zoning regulations. A zoning district may also be referred to as a district or a zone.

The **zoning hearing board** or **ZHB** is a local decision-making body that is responsible for making certain types of land use decisions as provided in the Municipalities Planning Code. Zoning hearing board members are appointed by the governing body.

A **zoning map** shows the boundaries of a municipality’s zoning districts.

A **zoning ordinance** is an ordinance that regulates how land in the municipality may be used. It may contain provisions that permit, prohibit, restrict and/or regulate uses of land, lot sizes, or the size, height, bulk, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures. Typically, zoning ordinances divide the municipality into two or more zoning districts and specify types of uses that are permitted and prohibited in each district (e.g., residential, commercial, or industrial uses). Zoning ordinances may also impose specific requirements on specific uses. Zoning ordinances also typically specify the minimum lot size in each zoning district, what portion of the lot may be covered with buildings and other impervious surfaces and how close to the property lines structures may be. Zoning ordinances may also contain provisions for special exceptions, conditional uses and variances and set forth the processes for applying for and obtaining each.

The **zoning officer** is an individual or business entity appointed by the governing body to interpret and administer the zoning ordinance on a day-to-day basis. The zoning officer issues zoning permits for construction and for changes in use so long as the use and construction conform with the zoning ordinance and no further approvals are required.

APPENDIX B – HOW TO READ ORDINANCES

Ordinances are not, shall we say, page-turners. They can be dense and complex, but with some practice, anyone can navigate their way through.

Let's look at an example from one of Pennsylvania's many Franklin Townships. Below is the table of contents for the ordinance of Franklin Township, Adams County, as seen on the eCode360 website. When all of a municipality's ordinances are organized together, it is called the code of ordinances.

| | |
|---|--|
| Township of Franklin, PA Adams County | |
| Includes legislation through 06-02-2022. | |
| Part I, Administrative Legislation | |
| Chapter 1 | General Provisions (§ 1-1 – § 1-15) |
| Chapter 5 | Authorities, Municipal (§ 5-1 – § 5-6) |
| Chapter 10 | Emergency Management Agency (§ 10-1 – § 10-13) |
| Chapter 14 | Fire Companies, Volunteer (§ 14-1 – § 14-3) |
| Chapter 18 | Firemen's Relief Association (§ 18-1 – § 18-3) |
| Chapter 27 | Officers and Employees (§ 27-1 – § 27-3) |
| Chapter 35 | Planning Commission (§ 35-1 – § 35-5) |
| Chapter 43 | Salaries and Compensation (§ 43-1) |
| Part II, General Legislation | |
| Chapter 59 | Assemblies, Mass Public (§ 59-1 – § 59-10) |
| Chapter 64 | Building Permits (§ 64-1 – § 64-8) |
| Chapter 65 | Building and Property Maintenance (§ 65-1 – § 65-7) |
| Chapter 70 | Buildings, Numbering of (§ 70-1 – § 70-6) |
| Chapter 75 | Buildings, Storage of (§ 75-1 – § 75-8) |
| Chapter 83 | Fees (§ 83-1 – § 83-2) |
| Chapter 87 | Floodplain Management (§ 87-1 – § 87-35) |
| Chapter 96 | Junkyards and Junk Dealers (§ 96-1 – § 96-14) |
| Chapter 104 | Massage Establishments (§ 104-1 – § 104-10) |
| Chapter 110 | Noise Nuisances (§ 110-1 – § 110-12) |
| Chapter 119 | Rental Occupancy Reports (§ 119-1 – § 119-5) |
| Chapter 126 | Sewers (§ 126-1 – § 126-26) |
| Chapter 133 | Solid Waste (§ 133-1 – § 133-5) |
| Chapter 136 | Stormwater Management (§ 136-1 – § 136-41) |
| Chapter 138 | Streets and Sidewalks (§ 138-1 – § 138-22) |
| Chapter 142 | Structures, Dangerous (§ 142-1 – § 142-9) |
| Chapter 146 | Subdivision and Land Development (§ 146-1 – § 146-100) |
| Chapter 151 | Taxation (§ 151-1 – § 151-49) |
| Chapter 155 | Traffic Improvement Districts and Impact Fees (§ 155-1 – § 155-20) |
| Chapter 160 | Vehicles and Traffic (§ 160-1 – § 160-25) |
| Chapter 164 | Vehicles, Inoperable (§ 164-1 – § 164-8) |
| Chapter 168 | Water (§ 168-1 – § 168-27) |
| Chapter 173 | Yard Sales and Flea Markets (§ 173-1 – § 173-7) |
| Chapter 175 | Zoning (§ 175-1 – § 175-10) |
| Appendix | |
| Chapter A178 | Fees (§ A178-1 – § A178-2) |

Sometimes it takes a while for new ordinances to be added to the online version. This notation will tell you how up to date the online ordinance is. If you suspect a new ordinance has been passed since this date, check with the municipal office.

"Administrative Legislation" deals mostly with how the local government operates. This section may include information on how municipal bodies are chosen, how employees are paid, and the municipality's relationships with outside organizations like volunteer fire companies.

"General legislation" applies to residents and landowners in the municipality. Each chapter deals with a separate topic, which are usually listed alphabetically. Chapter numbers are often skipped to allow for new chapters to be inserted later.

This table of contents shows the sections that are found in each chapter in parenthesis after the chapter title. Here, you can see that every section dealing with Massage Establishments is found in Chapter 104 and therefore starts with "104." The individual sections within that chapter are designated as "-1," "-2," "-3," and so forth. Many ordinances are structured this way, but some may be structured differently.

As we will see later, most sections are subdivided further using additional letters and numbers.

In this ordinance, the SALDO is Chapter 146 and includes sections 146-100 through 146-920.

In this code of ordinances, the zoning ordinance is Chapter 175. Let's click here to find out how to navigate the zoning ordinance!

APPENDIX B – HOW TO READ ORDINANCES CONT.

Here is what we see at the top of the page when we click on the zoning ordinance in the table of contents:

Township of Franklin, PA

Enter search term...

Township of Franklin, PA / Part II, General Legislation

Chapter 175 Zoning

[HISTORY: Adopted by the Board of Supervisors of Franklin Township 2-5-2015 by Ord. No. 2015-3.

Amendments noted where applicable.]

GENERAL REFERENCES

Planning Commission — See Ch. 35.

Adult uses — See Ch. 50.

Building permits — See Ch. 64.

Floodplain management — See Ch. 87.

Junkyards and junk dealers — See Ch. 96.

Subdivisions and land development — See Ch. 146.

Fees — See Ch. A178.

ATTACHMENTS

Attachment 1 - Chart A, Permitted Permanent Signs

Attachment 2 - Chart B, Permitted Temporary Signs

Zoning Map

Editor's Note: This ordinance also supersedes former Ch. 175, Zoning, adopted 10-10-1995, as amended.

Franklin Township includes some helpful references to other chapters of the code of ordinances that readers may be looking for.

Zoning ordinances often include attachments like tables or maps. On the eCode360 website, they are usually at the top of the page like this. In other formats, they may be at the end of the ordinance in an appendix.

If we scroll down on the page, we'll see some common sections found at the beginning of most zoning ordinances.

Attachment 1 - Chart A, Permitted Permanent Signs

Attachment 2 - Chart B, Permitted Temporary Signs

Zoning Map

Editor's Note: This ordinance also supersedes former Ch. 175, Zoning, adopted 10-10-1995, as amended.

Article I Short Title, Purpose and Community Development Objectives

§ 175-1 Short title; placement.

§ 175-2 Purpose.

§ 175-3 Community development objectives.

Article II Definition and Word Use

§ 175-4 Intent.

§ 175-5 General interpretation.

§ 175-6 Definitions.

The “purpose” section of the zoning ordinance lists the goals the ordinance is meant to achieve. It may include things like “facilitating proper population density” and “preserving sensitive natural features.” These are not requirements that specific land uses or developments are required to meet.

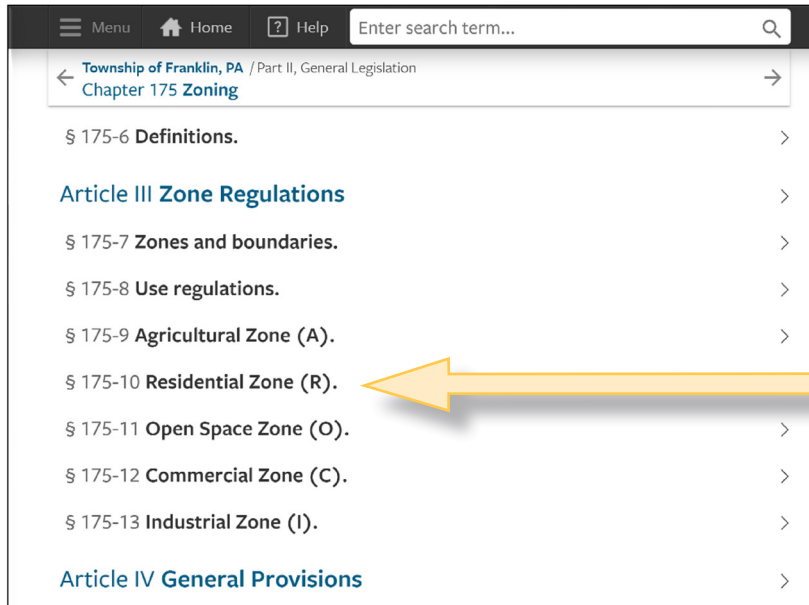
The definitions section is a very important part of every ordinance. If a term is defined in this section, that definition is the one that must be used when interpreting the ordinance, even if it is different from how the term may be used in common speech or in a dictionary.

APPENDIX B – How to Read Ordinances

81

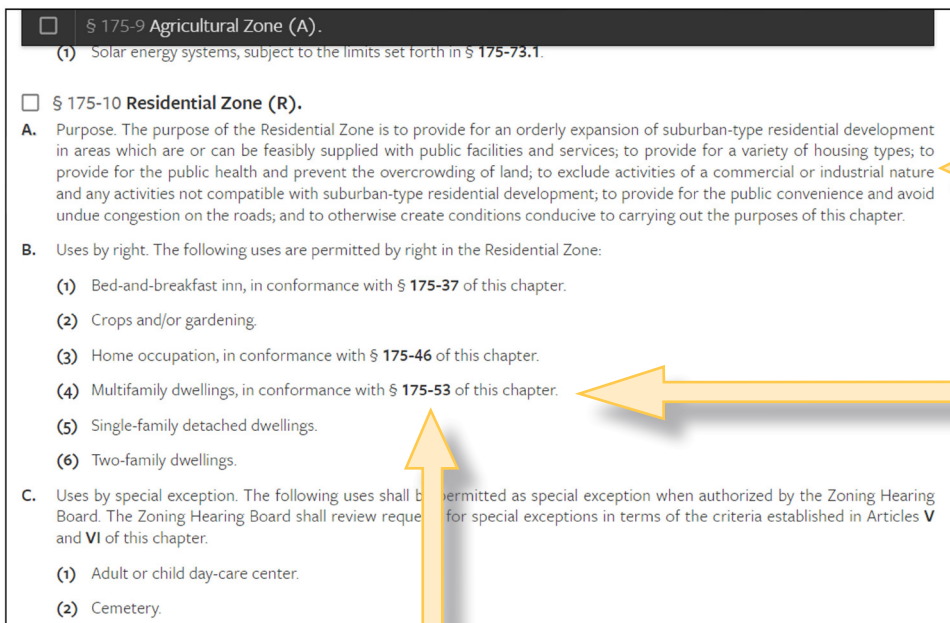
APPENDIX B – HOW TO READ ORDINANCES CONT.

Scrolling further down on the same screen, we'll see there is a separate section for each zoning district. Remember to use the zoning map to find out what zoning district a property is in.



Let's click on this section to see the regulations that apply in the Residential (R) zoning district in Franklin Township.

Clicking on “Residential Zone” takes us to the page for section 175-10, shown below.



The first subsection is a paragraph explaining the purpose of the Residential Zone. This is similar to the “purposes” section for the entire zoning ordinance.

Next is a list of uses **permitted by right** (sometimes called **by-right uses**). This means these uses do not require conditional use or special exception approval in the Residential Zone.

Cross-references like this one direct the reader to other sections of the ordinance that contain requirements relevant to specific uses. You can click on the bolded text or return to the table of contents to find the cross-referenced section.

APPENDIX B – HOW TO READ ORDINANCES CONT.

Continuing down the page, we see the list of special exception uses in the Residential Zone. Anyone wishing to use land for these purposes must obtain special exception approval from the ZHB (see page 52 for more information about special exceptions).

MenuHome? HelpEnter search term...

Township of Franklin, PA / Part II, General Legislation / ZoningArticle III Zone Regulations

§ 175-10 Residential Zone (R).

(5) Single-family detached dwellings.

(6) Two-family dwellings.

C. Uses by special exception. The following uses shall be permitted as special exception when authorized by the Zoning Hearing Board. The Zoning Hearing Board shall review requests for special exceptions in terms of the criteria established in Articles V and VI of this chapter.

(1) Adult or child day-care center.

(2) Cemetery.

(3) Club room, club ground, meeting hall.

(4) Cluster housing development.

(5) Group quarters.

(6) Medical clinic.

(7) Mobile home park.

This cross-reference lets the reader know where to find the requirements for special exception approval.

Ordinances are organized into sections and subsections. Each part or provision of an ordinance can be referred to using the numbers and letters it is found under. For example, in this ordinance, the provision referring to medical clinics is Section 175-10(C)(6). “Section” can also be abbreviated using the § symbol.

Further down, we find what are called dimensional requirements.

D. Lot area and width. Lot area and lot width not less than the following dimensions shall be provided for each principal use hereafter established in this zone:

| | Public Water and Public Sewer | | Public Water or Public Sewer | | No Public Water nor Public Sewer (See Subsection H) | |
|--|-------------------------------|-------------------|------------------------------|-------------------|---|-------------------|
| | Lot Area | Lot Width | Lot Area | Lot Width | Lot Area | Lot Width |
| Single-family and two-family dwellings | 8,000 square feet per unit | 80 feet per unit | 15,000 square feet per unit | 80 feet per unit | 30,000 square feet per unit | 150 feet per unit |
| All other Uses | 15,000 square feet | 100 feet per unit | 20,000 square feet per unit | 100 feet per unit | 30,000 square feet | 150 feet per unit |

E. Setbacks. Each lot shall provide front, side and rear setbacks not less than the following:

(1) Front: 35 feet.

(2) Side: 10 feet. Semidetached and attached dwellings shall be considered as one building for this purpose.

(3) Rear: 25 feet.

F. Height: The height limit for a principal building or structure shall be 2 1/2 stories, but not over 30 feet. The height limit for an accessory building or structure shall be two stories, but not over 25 feet. There shall be no height limitation for farm buildings.

G. Lot coverage. Not more than 45% of the lot area may be covered with an impervious surface.

In this zoning district, minimum lot area and width depend on the type of use and whether public water and sewer are available. Not all ordinances are structured like this, but many are.

Dimensional requirements also include setbacks, height limitations, and limits on how much of a lot can be covered by impervious surfaces.

APPENDIX B – How to Read Ordinances

83

APPENDIX B – HOW TO READ ORDINANCES CONT.

Let's say a landowner wants to construct a medical clinic in the Residential Zone in Franklin Township. As we saw on the previous page, medical clinics are special exception uses in the Residential Zone, and the criteria for special exceptions are found in Articles V and VI. Let's return to the table of contents and look at Articles V and VI to find out more about the special exception requirements.

The screenshot shows the Township of Franklin, PA website. The navigation bar includes Menu, Home, and Help links, along with a search bar. The breadcrumb trail indicates the location: Township of Franklin, PA / Part II, General Legislation / Chapter 175 Zoning. The main content area lists the table of contents for the Zoning Ordinance, organized by Article and Section. Three yellow callout boxes with arrows provide context:

- Article V Zoning Hearing Board**: As we can see from the title of Article V and the sections within it, this Article deals with the ZHB and the types of decisions it is responsible for making.
- § 175-30 Special exceptions.**: Requirements for special exception uses are found in Section 175-30. We'll go here next.
- § 175-34 Age-restricted residential developments.**: Article VI contains specific requirements for many different types of uses. We'll return here in a minute.

The table of contents lists the following sections:

- Article V Zoning Hearing Board**
 - § 175-27 Powers and duties generally.
 - § 175-28 Hearings.
 - § 175-29 Variances.
 - § 175-30 Special exceptions.
- Article VI Standards for Uses**
 - § 175-31 Requirement of specific standards.
 - § 175-32 Adult-oriented facility.
 - § 175-33 Adult or child day-care center or nursery school.
 - § 175-34 Age-restricted residential developments.
 - § 175-35 Agricultural worker family housing.
 - § 175-36 Animal hospital or veterinary clinic.
 - § 175-37 Bed-and-breakfast inn.
 - § 175-38 Campground.
 - § 175-39 Cemetery.
 - § 175-40 Club room, club grounds, meeting hall.
 - § 175-41 Cluster housing development.

APPENDIX B – HOW TO READ ORDINANCES CONT.

When we go to Section 175-30, we first see information about what a special exception applicant must submit with their application and how the process for obtaining approval works. These sections are not shown here. Further down the page, shown below, we see “General Standards” and “Special Standards.” These are requirements that every special exception use must meet.

The screenshot shows a web page for the Township of Franklin, PA, specifically Article V Zoning Hearing Board. The page title is § 175-30 Special exceptions. The content is organized into sections E and F. Section E, General standards, contains two numbered items. Item (1) describes the evidence required for a special exception, with a callout box explaining 'Preponderance of the evidence'. Item (2) describes the burden of proof, with a callout box explaining 'The burden of proof'. Section F, Special standards, states that specific standards for particular uses must be met prior to the granting of a special exception, with a callout box explaining this requirement.

Menu Home ? Help Enter search term...

← Township of Franklin, PA / Part II, General Legislation / Zoning Article V Zoning Hearing Board →

§ 175-30 Special exceptions.

necessary to implement the purposes of this Zoning chapter.

E. General standards.

(1) A special exception may be granted when the Zoning Hearing Board finds from a preponderance of the evidence produced at the hearing that:

- (a) The proposed use, including its nature, intensity and location, is in harmony with the orderly and appropriate development of the zone;
- (b) Adequate water supply, sewage disposal, storm drainage and fire and police protection are or can be provided for the use;
- (c) The use of adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature and height of buildings, walls and fences;
- (d) The use will have proper location with respect to existing or future streets giving access to it, and will not create traffic congestion or cause industrial or commercial traffic to use residential streets; and
- (e) The specific standards set forth for each particular use for which a special exception may be granted have been met.

(2) The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Zoning Hearing Board.

F. Special standards. In addition to the general standards for all special exceptions as contained in Subsection E, the specific standards for particular uses as listed in Article VI must be met prior to the granting of a special exception.

Preponderance of the evidence means that, given all the evidence, the thing that must be proven is more likely than not. It is not as high a bar as “beyond a reasonable doubt,” which is the standard for criminal convictions.

The **burden of proof** is the responsibility to present evidence and convince the decision-maker. This provision means that the applicant must demonstrate that they are entitled to special exception

This section explicitly states that all special exception uses must meet the standards for the particular use in Article VI. Let's go there now.

APPENDIX B – HOW TO READ ORDINANCES CONT.

If we return to Article VI in the table of contents, we see that specific standards for medical clinics are found in Section 175-50. Clicking on that takes us here:

The screenshot shows a web browser interface for the Township of Franklin, PA. The navigation bar includes links for Menu, Home, and Help, along with a search bar. The breadcrumb trail indicates the location: Township of Franklin, PA / Part II, General Legislation / Zoning / Article VI Standards for Uses. The main content area displays the title § 175-50 Medical clinic. Below the title, a paragraph states that medical clinics must meet all requirements in the district where such special exception use is permitted, except as modified hereinafter, and all additional requirements and standards stated hereinafter. A list of requirements follows, labeled A through G. Requirement A is 'Lot area: 1 acre minimum.' Requirement B is 'Lot width: 150 feet minimum.' Requirement C is 'Setbacks: All buildings shall be located at least 25 feet from any property line and 50 feet from a street line.' Requirement D is 'Public water and sewer facilities approved by the Pennsylvania Department of Environmental Protection must be utilized.' Requirement E is 'Buffers and screens shall be provided adjacent to any adjoining residential use or zone in accordance with the requirements of § 175-22.' Requirement F is 'Appearance should be harmonious with adjoining properties. This feature includes but is not limited to landscaping, height control, sign control, building coverage, and architectural controls.' Requirement G is 'Accessory services, including laboratories and pharmacies for the use of patients visiting medical practitioners in the clinic, may be permitted in the R Zone as part of the clinic facility subject to the following specific conditions:'. Below requirement G, there are three numbered sub-requirements: (1) All entrances to parts of the building in which these accessory services are provided shall be from within the building, and any direct access from the street is prohibited. (2) The hours during which these services are provided shall be the same as those during which medical practitioners are receiving patients. (3) Signs or other evidence advertising or indicating the provision of these services visible from outside the building are prohibited; except that there may be erected one sign not exceeding two square feet in area attached to the building, any illumination thereof being white, nonflashing, and limited to an enclosed lamp design.

← Township of Franklin, PA / Part II, General Legislation / Zoning
Article VI Standards for Uses

§ 175-50 Medical clinic.

Medical clinics must meet all of the requirements in the district where such special exception use is permitted, except as modified hereinafter, and all additional requirements and standards stated hereinafter:

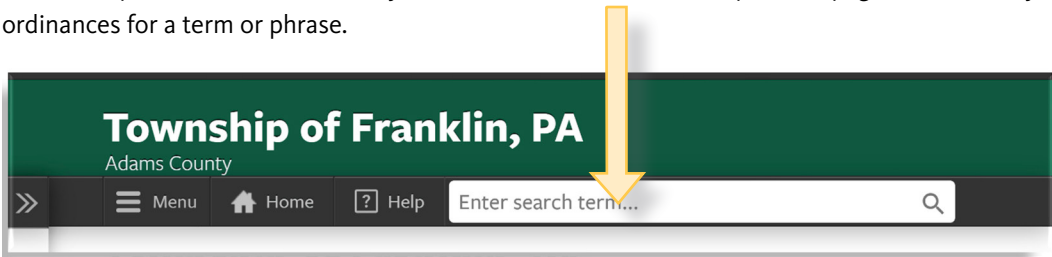
- A. Lot area: 1 acre minimum.
- B. Lot width: 150 feet minimum.
- C. Setbacks: All buildings shall be located at least 25 feet from any property line and 50 feet from a street line.
- D. Public water and sewer facilities approved by the Pennsylvania Department of Environmental Protection must be utilized.
- E. Buffers and screens shall be provided adjacent to any adjoining residential use or zone in accordance with the requirements of § 175-22.
- F. Appearance should be harmonious with adjoining properties. This feature includes but is not limited to landscaping, height control, sign control, building coverage, and architectural controls.
- G. Accessory services, including laboratories and pharmacies for the use of patients visiting medical practitioners in the clinic, may be permitted in the R Zone as part of the clinic facility subject to the following specific conditions:
 - (1) All entrances to parts of the building in which these accessory services are provided shall be from within the building, and any direct access from the street is prohibited.
 - (2) The hours during which these services are provided shall be the same as those during which medical practitioners are receiving patients.
 - (3) Signs or other evidence advertising or indicating the provision of these services visible from outside the building are prohibited; except that there may be erected one sign not exceeding two square feet in area attached to the building, any illumination thereof being white, nonflashing, and limited to an enclosed lamp design.

Sometimes, like here, there are dimensional requirements for specific uses that differ from the ones that generally apply in the zoning district. When that happens, the more restrictive requirement applies.

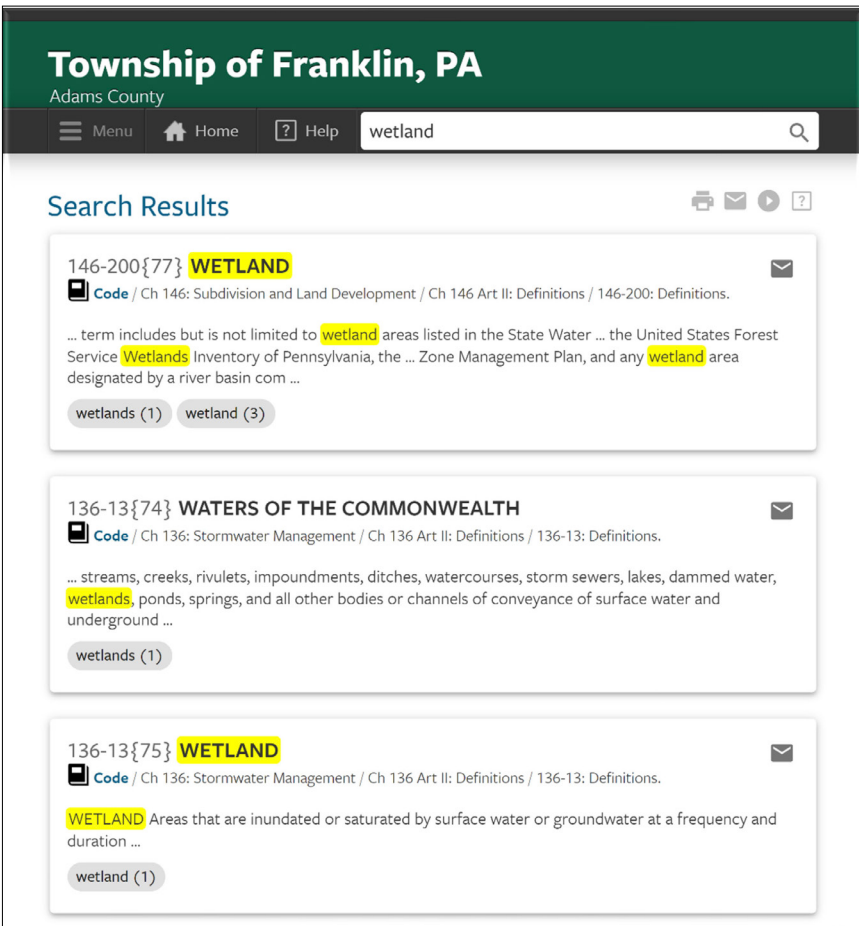
This section also contains certain requirements that are relevant to medical clinics but not other uses. When a medical clinic is a special exception use, the applicant must prove to the ZHB at the special exception hearing that all these requirements will be met. This is usually done by presenting plans and testimony of engineers or other professionals who are involved in designing the project.

APPENDIX B – HOW TO READ ORDINANCES CONT.

One last tip. Online ordinances may include a search bar at the top of the page. This allows you to search the entire code of ordinances for a term or phrase.



Let’s say you wanted to know everywhere the term “wetland” is found in the Franklin Township code of ordinances. By entering “wetland” into the search box, you will get a list of all provisions containing that word. A word of warning: The search function will show results from the entire code of ordinances, not just land use ordinances. Make sure the provision is relevant to the matter you are concerned about.



This is just a very brief overview of what you may find in a zoning ordinance and how to navigate and read them. Most zoning ordinances (including the Franklin Township one we just looked at) contain much more information. Your municipality’s zoning ordinance may also be organized differently. The best way to familiarize yourself with it is to spend some time looking through it!

ADVOCACY TIP!

These advocacy tools can, and probably should be, used in conjunction with each other and with engagement in public meetings and hearings.

Depending on the issue or process before your local municipality body, there are additional advocacy options that you may consider to present your – and your larger community’s – opposition or support of a matter. The following are some options you may wish to consider.

Create Talking Points

Talking points are messaging tools used to make clear, convincing arguments. Talking points are helpful to share with others to ensure consistent and accurate messaging on an issue. Remember, it’s important to share how the issue that you’re writing about will impact you as an individual, your community, or the environment. Be succinct, personal, and persuasive.

Write a Letter to the Decision-Making Body in Support or Opposition

You can send a letter in support of or opposition of a land use matter to your local government decision-makers. A letter, as opposed to a petition, can include more details and information in support of why the municipality should consider undertaking the action you seek, and can include specific issues or concerns relevant to your particular municipality. For those who are not comfortable with public speaking or who may not be able to attend an in-person public meeting, a letter may be a good alternative to communicate your position to decision-makers.

Petitions

A petition is a great way to demonstrate a large amount of support for one clear, concise message to a decision-maker or decision-making body. A petition is a simple statement or position that has a collection of signatures from people supporting your issue. The petition is then presented to decision-makers and can be a useful tactic to entice your local elected officials to take action.

Petitions can be created online, using already-established websites, or you can write a petition and take it door-to-door in your community for signatures, or both!

Digital Advocacy and Social Media

Digital advocacy has become one of the easiest and most popular ways to inform people about an issue and to mobilize supporters to get engaged. Social media platforms like Facebook offer a simple and free way to share messages and reach people you may not know. Creating an email list-serv is also a great way to alert those who have signed up about upcoming events or to provide them with information.

Letters to the Editor

The Letters to the Editor (LTE) section is one of the most-read sections of the newspaper. LTEs allow us to educate the public on the issues that matter most to us and influence decision-makers in the process. LTEs are often in direct response to a recent article in the newspaper, but they can also be used to alert readers to an important issue or incoming threat. A letter from a local resident, business owner, volunteer, or organization makes a big impact.



www.pennfuture.org

Contact PennFuture:

info@pennfuture.org
800-321-7775
610 North Third Street
Harrisburg, PA 17101