

PROGRAM SUMMARY

Highway to Growth: Streamlining the Land Development Process

September 17, 2014 at 8:00 a.m. – 11:30 a.m. / U.S. Army Heritage Education Center

PANELISTS & MODERATOR

Kirk Stoner, Director of Planning, Cumberland County Planning Department

Dennis Puko, Planning Program Manager, PA Department of Community and Economic Development

John Mizerak, Economic Development Manager, Tetra Tech

Jonathan Andrews, Member, McNees, Wallace & Nurrick, LLC

Moderator: Mary Kuna, Market Development Manager, CAEDC

Moderator Questions

- Can you explain how the process of land development has evolved over the years?
  - **a.** The Municipalities Planning Code (MPC) began as a very simple process directed by the municipalities with little involvement of the State. Now there are overwhelming regulations that have been added to the process.
  - **b.** What has been the most complicated part of the process?
    - The State regulations are the complex portion of the process
- What are Pros and Cons of the lengthy process?
  - **a.** Pro: There is a lot of flexibility in the process – i.e. Conditional uses; Overlay districts;
  - **b.** Con: The MPC may be too specific in some areas of the process.
  - **c.** Con: Unpredictability in the process and the differences between municipalities.
- Is the State level more predictable than the local level?
  - **a.** No, the State is just as unpredictable. One reason for this is due to dealing with the different Conservation Districts who are dealing with different issues across the State. Permitting processes may need to be changed to allow for more coordination among state agencies. Specifically, PennDOT has made some improvements while DEP has been focused on regulations for the Shale market.

Panelists encouraged the attendees to deal with challenges on a local level to bring about resolution to issues rather than waiting for the State to work it out.

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- What examples do you have on good and bad projects?
  - a. On a local level, what has been experienced to be a good process requires looking at a project very early in an informal setting between developer and municipality.
    - This allows for better planning of the project by the developer.
  - b. The MPC process that is in place today protects the public interest and that is why it is the way it is.
  - c. Failure: Allegheny County project in which a municipality did not follow their own process/regulations for a site being developed by a "Big Box" developer. A large amount of fill material was improperly placed on the site that eventually created a landslide.
  - d. Success: Land Development Ordinances when properly followed are to the benefit of the project.
  - e. Good Practice: Develop an early sketch plan as a means of discussing the project with the municipality.
- What can be done to improve the process?
  - a. A local permitting process study has been conducted to understand how the process can be improved.
    - Unified development ordinance has been discussed to simplify and enhance the process. Details not yet established
  - b. More interaction between local municipalities to get ordinances and processes to be similar.
  - c. Berks County has established a process where they take the lead on projects and are not relying on the State to make decisions.
  - d. Make it easier for smaller developments to get through approval quicker than larger ones that have more impact.
  - e. Create an expediting process which would include additional costs.
  - f. Combination of Preliminary and Final planning processes as a possible change towards improvement.
  - g. The MPC was enacted in 1968. The only time it has been reviewed since then was in 1988. It is due for another review and discussion on the process.
- What should a developer do to help this process move along quicker and easier?
  - a. An attitude change would help. Don't go in with preconceived ideas regarding the municipality where you are looking to do a project.
  - b. In the early meetings, leave the attorney at home. Many municipalities are threatened by that.
  - c. Have a positive view rather than a negative one.
  - d. Read and understand the local ordinance.
  - e. Transparency of project
  - f. Engage the municipality with which you want to work with to better understand their process and to help if an improvement of the ordinance needs to take place.
- How do we compare to other States?
  - a. PA Planning Code is based on what was established in the 1920's.
  - b. The difference in PA is the additional levels of government that exist in the municipalities.
  - c. A North Carolina developer that did a project in Lancaster County was "flabbergasted" by our regulatory and approval process for projects.
  - d. We aren't as competitive with other States when it comes to the speed of the approval process therefore causing some out of town developers to go elsewhere.
- What are some trends happening moving forward?
  - a. The amount of regulations is going to be increasing.
  - b. Storm water management continues to be an issue
  - c. The Chesapeake Bay also continues to be a challenging issue

   d. Redevelopment opportunities will be increasing.
      e. Dealing with transit and incorporating that into new development projects.
   f. Place matters to future generations
- 10 years from now where do you see PA going?
   a. Begin by looking back and learn from the past and what others have gone through during growth periods
   b. Embracing the energy market and our natural resources
   c. Good water is available which will help with growth
   d. The changes in the Panama Canal and shipping industry is going to impact PA
   e. More team work between developers and municipalities will be required for growth





Audience Questions

- How can the use of existing sites become more attractive to developers?
   a. It is difficult for developers to look at redeveloping an existing site due to layout, size and other existing site related issues that don't exist with a Greenfield site.
      b. Philadelphia has enacted a storm water tax to encourage more redevelopment of existing sites.



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Thanks to The Sentinel and abc27 for their media coverage!

Attachment: DCED's Planning Series publication Subdivision and Land Development in Pennsylvania.

The following is an excerpt from the draft update of DCED's Planning Series publication *Subdivision and Land Development in Pennsylvania.*

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IMPROVING THE SUBDIVISION AND LAND DEVELOPMENT REVIEW PROCESS

A subdivision and land development ordinance helps achieve noble and lofty goals for the good of a community and its residents and businesses. Yet there are often news accounts of local reviews of development projects that are contentious and even adversarial. A subdivision and land development ordinance and its review-and-approval process can be complex and time-consuming. Much of this is rooted in the process as authorized by the Pennsylvania Municipalities Planning Code which has changed little since original enactment in 1968. Still, there are measures a local government can take, consistent with existing law, to lessen tensions and make the development review-and-approval process more of a win-win for all parties involved.

Differing Perspectives

Different parties involved in the development review process – the local government, developers, and citizens – bring different perspectives to the process. Development reviewers should be aware of and take into account the differing perspectives.

- **Local government perspectives** – Local officials have the challenge of representing the public interest. Ideally the public interest is embodied in a comprehensive plan. Practically, local officials are beholden to multiple bottom lines: generation of tax revenue vs. cost to serve development; different neighborhood interests; politics; limited administrative capacity; etc.
- **Developer perspectives** – Developers want to make a profit and are very sensitive to the money cost of time. Most are not averse to typical regulations, but desire the regulations and development review process to be clear and predictable. More developers than perceived are interested in doing a quality project that contributes to the community.
- **Citizen perspectives** – Citizens also want to see the public interest served, but their interests are narrower and often based on protecting their own homes and neighborhoods vs. the uncertain change new development might bring.

Challenges and Issues

In 2013, the Pennsylvania State Planning Board and Department of Community and Economic Development studied the local development review-and-approval process in Pennsylvania. With input from local officials, planners, developers, engineers, and attorneys, the study identified several challenges and issues:

- **The local development review process is complex.** The MPC-authorized subdivision and land development process has complex details. Many developments also involve zoning approvals – conditional uses or special exceptions, variances, amendments – which have different time frames and approval bodies. Many developments involve state and federal permitting.

- **The process can be time-consuming.** A single subdivision or land development approval, especially one that involves multiple regulatory approvals, can take a year or more.
- **The process can be unpredictable.** Different counties and municipalities have different regulations and variations on the review-and-approval process.
- **There are capacity issues on both the public and private side.** Many local governments lack staff time and expertise to adequately review developments. Many development applications lack complete information and fail to address regulatory requirements. Both end up causing delays and additional expenses.

Recommendations to Improve the Process

Under existing authority of law, there are process improvements local governments can implement to address the challenges and issues. The improvements are geared to achieve a win-win for local governments, developers, and the community.

- **Intergovernmental cooperation** – There are several options. By intergovernmental cooperation agreement, multiple municipalities can create and share the cost of a joint plan review professional, either as shared staff or as a contracted consultant. This would provide a high level of review capacity for municipalities that could not afford or support it on their own. A cooperative program could also include a common application form, uniform submission requirements, a web-based information and application portal, and consistent process steps for all the municipalities. Further, municipalities could work together to enact more consistent ordinance terminology and standards, or to devise a uniform subdivision and land development ordinance all municipalities enact. Municipalities can cooperate with and utilize the professional capacity of the county. Section 502(c) of the MPC says a municipality may designate the county planning agency (with its concurrence) as the official administrative agency for review and approval of subdivision and land development plans. Section 502(c) also says a municipality may adopt the county subdivision and land development ordinance by reference and administer it as the municipal ordinance.
- **Team approach** – Several counties in Pennsylvania utilize a team approach to coordinate and expedite reviews and approvals for larger-scale, higher-profile, or more economically-significant developments. Typically a county planning or economic development agency serves as the lead and coordinates a team of local officials and agencies from multiple levels of government involved in development review. The team sets an expedited review schedule by mutual agreement, works together to address problems as they arise, and helps promote a quality development project.
- **Tiered reviews** – Several counties and municipalities provide for different tiers of development review. Smaller or lower impact subdivisions and developments are subject to fewer steps over less time than larger or higher impact subdivisions and developments. For instance, one county provides planning department staff with authority to review and approve minor subdivisions without the additional step and time of planning commission approval. Major plans must be approved by the planning commission.
- **Express-lane reviews** – A practice done by some planning agencies in other states is to offer an optional express review that bypasses the "normal" queue of development reviews. The express

review is done upon request and payment of a higher review fee by a developer/applicant. The planning agency uses the fee to pay an outside-party consultant to perform an expedited review without slowing down the normal queue of reviews and without lessening the diligence applied to the expedited review.

Practitioner Insights

Below are additional suggestions for elected officials, planning commission members, planners, engineers, and attorneys who work on the front lines and interact with developers and the public in administering a subdivision and land development ordinance:

- **Be proactive.** Perform technical compliance reviews as promptly as possible. Provide them to the applicant and parties involved in the review well in advance of meetings. Catch problems and deficiencies in the first review. The sooner parties talk, the easier it is to resolve problems. Respond to calls and e-mails promptly, within 24 hours.
- **Read and know the ordinance.** "We've always done it that way!" is not in the ordinance. Judge compliance by the standards in the ordinance. If an applicant meets the standards, the development must be approved. If not, the development must be denied unless waivers or modifications are granted or approval is conditioned on measures to achieve compliance. The municipality cannot require a development to meet standards more restrictive than or not in the ordinance without consent of the applicant.
- **When needed, amend the ordinance.** If literal administration of ordinance standards is not resulting in development consistent with municipal goals, then work on changes to the ordinance. Involve developers and their engineering and design consultants in drafting revisions.
- **Know and stick to the process and timelines.** Don't fight about the process. It is set by the MPC and the municipal ordinance, and it is what it is. Don't introduce any changes or surprises as the process unfolds.
- **Provide clarity.** Give the applicant a copy of the ordinance or the link to it online. Provide information sheets with the application form describing process, timelines, and instructions.
- **Help identify solutions as well as problems and deficiencies.** Help the applicant consider alternatives that will meet the regulations. Conversely, let the applicant make a case for a development proposal that doesn't match the regulations. A different approach may yield equally good or better results, and approval of modifications may be worthwhile.
- **Coordinate the subdivision and land development review with zoning and other local reviews.**
- **Leave political bias and personal opinions out of the process.**
- **Be honest and forthright in dealings with other parties.** Do not be adversarial. Come into dealings with a positive attitude and leave with a positive attitude. Personal reactions – including body language – are tone setters.