No. 1988-170

AN ACT

SB 535

Reenacting and amending the act of July 31, 1968 (P.L.805, No.247), entitled, as amended, "An act to empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second class A through eighth classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts," revising, amending, adding and changing provisions; and making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, amended June 23, 1982 (P.L.613, No.173), is reenacted and amended to read:

AN ACT

To empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second class A through eighth classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; ***providing for mediation; providing for transferable development rights;*** providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts.

Section 2. The heading of Article I and sections 101 and 102 of the act are reenacted to read:

ARTICLE I
General Provisions

Section 101. Short Title.—This act shall be known and may be cited as the "Pennsylvania Municipalities Planning Code."

Section 102. Effective Date.—This act shall take effect January 1, 1969.

Section 3. Section 103 of the act, amended June 1, 1972 (P.L.333, No.93), is reenacted and amended to read:

Section 103. Construction of Act.—The provisions of this act shall not affect any act done, contract executed or liability incurred prior to its effective date, or affect any suit or prosecution pending or to be instituted, to enforce any right, rule, regulation, or ordinance or to punish any offense against any such repealed laws or against any ordinance enacted under them. All ordinances, resolutions, regulations and rules made pursuant to any act of Assembly repealed by this act shall continue in effect as if such act had not been repealed, except as the provisions are inconsistent herewith. The provisions of other acts relating to municipalities **[and townships]** ***other than cities of the first and second class and counties of the second class*** are made a part of this act and this code shall be construed to give effect to all provisions of other acts not specifically repealed.

Section 4. Section 104 of the act is reenacted to read:

Section 104. Constitutional Construction.—The provisions of this act shall be severable, and if any of its provisions shall be held to be unconstitutional, the validity of any of the remaining provisions of this act shall not be affected. It is hereby declared as the legislative intention that this act would have been adopted had such unconstitutional provision not been included therein.

Section 5. Section 105 of the act, amended June 23, 1982 (P.L.613, No.173), is reenacted and amended to read:

Section 105. Purpose of Act.—It is the intent, purpose and scope of this act to protect and promote safety, health and morals; to accomplish **[a]** coordinated development **[of municipalities, other than cities of the first and second class]**; to provide for the general welfare by guiding and protecting amenity, convenience, future governmental, economic, practical, and social and cultural facilities, development and growth, as well as the improvement of governmental processes and functions; to guide uses of land and structures, type and location of streets, public grounds and other facilities; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; and to permit municipalities**[, other than cities of the first and second class,]** to minimize such problems as may presently exist or which may be foreseen. **[It is the further intent of this act that any recommendations made by any planning agency to any governing body shall be advisory only.]**

Section 6. Section 106 of the act is reenacted to read:

Section 106. Appropriations, Grants and Gifts.—The governing body of every municipality is hereby authorized and empowered to make such appropriations as it may see fit, to accept gifts, grants or bequests from public and

private sources for the purpose of carrying out the powers and duties conferred by this act, and to enter into agreements regarding the acceptance or utilization of such grants, gifts or bequests.

Section 7. Section 107 of the act, amended June 1, 1972 (P.L.333, No.93), June 9, 1982 (P.L.441, No.130), June 23, 1982 (P.L.613, No.173) and June 24, 1982 (P.L.628, No.177), is reenacted and amended to read:

Section 107. Definitions.—**[As used in this act, except where the context clearly indicates otherwise, the following words or phrases have the meanings indicated below:]** ***(a) The following words and phrases when used in this act shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:***

[(1)] "Applicant," a landowner or developer, as hereinafter defined, who has filed an application for development including his heirs, successors and assigns.

[(2)] "Application for development," every application, whether preliminary, ***tentative*** or final, required to be filed and approved prior to start of construction or development including but not limited to an application for a building permit, for the approval of a subdivision plat or plan or for the approval of a development plan.

[(3)] "Appointing authority," the mayor in cities; **[the chairman of]** the board of commissioners in counties; the council in incorporated towns and boroughs; the board of commissioners in townships of the first class; and the board of supervisors in townships of the second class; or as may be designated in the law providing for the form of government.

"Authority," a body politic and corporate created pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the "Municipality Authorities Act of 1945."

"City" or "cities," cities of the second class A and third class.

[(4)] "Common open space," a parcel or parcels of land or an area of water, or a combination of land and water within a development site and designed and intended for the use or enjoyment of residents of **[the planned residential]** ***a*** development, not including streets, off-street parking areas, and areas set aside for public facilities.

[(5) "City" or "cities," cities of the second class A and third class.]

"Conditional use," a use permitted in a particular zoning district pursuant to the provisions in Article VI.

[(6)] "County," any county of the second class A through eighth classes.

"Developer," any landowner, agent of such landowner, or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

[(7)] "Development plan," the provisions for development, **[of]** ***including*** a planned residential development, **[including]** a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities. The phrase "provisions of the development plan" when used in this act shall mean the written and graphic materials referred to in this definition.

[(8) "Developer," any landowner, agent of such landowner or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

(9) "Engineer," a professional engineer licensed as such in the Commonwealth of Pennsylvania, duly appointed as the engineer for a municipality, planning agency, or joint planning commission.

(10)] "Governing body," the council in cities, boroughs and incorporated towns; the board of commissioners in townships of the first class; the board of supervisors in townships of the second class; the board of commissioners in counties of the second class A through eighth classes or as may be designated in the law providing for the form of government.

[(11)] "Land development," ***any of the following activities:***

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

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

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

[(ii) a] ***(2) A*** subdivision of land.

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

[(12)] "Landowner," the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land**[, shall be deemed to be a landowner for the purposes of this act]**.

"Lot," a designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

"Mediation," a voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement which the parties themselves create and consider acceptable.

[(12.1)] "Mobilehome," **[means]** a transportable, single family dwelling intended for permanent occupancy, **[office or place of assembly]** contained in one unit, or in two ***or more*** units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation.

[(12.2)] "Mobilehome lot," a parcel of land in a mobilehome park, improved with the necessary utility connections and other appurtenances necessary for the erections thereon of a single mobilehome**[, which is leased by the park owner to the occupants of the mobilehome erected on the lot]**.

[(12.3)] "Mobilehome park," a parcel ***or contiguous parcels*** of land **[under single ownership]** which has been **[planned and improved for the placement of mobilehomes for nontransient use, consisting of]** ***so designated and improved that it contains*** two or more mobilehome lots ***for the placement thereon of mobilehomes.***

"Municipal authority," a body politic and corporate created pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the "Municipality Authorities Act of 1945."

"Municipal engineer," a professional engineer licensed as such in the Commonwealth of Pennsylvania, duly appointed as the engineer for a municipality, planning agency or joint planning commission.

[(13)] "Municipality," any city of the second class A or third class, borough, incorporated town, township of the first or second class, county of the second class A through eighth class, ***home rule municipality,*** or any similar general purpose unit of government which shall hereafter be created by the General Assembly.

"Nonconforming lot," a lot the area or dimension of which was lawful prior to the adoption or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption or amendment.

[(13.1) "Nonconforming use," means a use, whether of land or of structure, which does not comply with the applicable use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment, or prior to the application of such ordinance or amendment to its location by reason of annexation.

(13.2)] "Nonconforming structure," **[means]** a structure or part of a structure manifestly not designed to comply with the applicable use ***or extent of use*** provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment or prior to the application of such ordinance or amendment to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.

"Nonconforming use," a use, whether of land or of structure, which does not comply with the applicable use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment, or prior to the application of such ordinance or amendment to its location by reason of annexation.

"Official map," a map adopted by ordinance pursuant to Article IV.

[(14)] "Planned residential development," an area of land, controlled by a landowner, 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 **[or]**, type of dwelling, ***or use,*** density, ***or intensity,*** lot coverage and required open space to the regulations established in any one **[residential]** district created, from time to time, under the provisions of a municipal zoning ordinance.

[(15)] "Planning agency," a planning commission, planning department, or a planning committee of the governing body.

[(16)] "Plat," the map or plan of a subdivision or land development, whether preliminary or final.

[(17)] "Public grounds," includes*:*

[(i)] *(1)* parks, playgrounds, ***trails, paths and other recreational areas*** and other public areas; **[and**

(ii)] *(2)* sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities*; and*

(3) publicly owned or operated scenic and historic sites.

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

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

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

[(18.1)] "Renewable energy source," **[means]** any method, process or substance whose supply is rejuvenated through natural processes and, subject to those natural processes, remains relatively constant, including, but not limited to, biomass conversion, geothermal energy, solar and wind energy and hydroelectric energy and excluding those sources of energy used in the fission and fusion processes.

"Special exception," a use permitted in a particular zoning district pursuant to the provisions of Articles VI and IX.

[(19)] "Street," includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct and any other ways used or intended to be used by vehicular traffic or pedestrians whether public or private.

[(20)] "Structure," any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

[(21)] "Subdivision," the division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, ***partition by the court for distribution to heirs or devisees,*** transfer of ownership or building or lot development: Provided, however, That the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or ***any*** residential **[dwellings]** ***dwelling***, shall be exempted.

[(22)] "Substantially completed," where, in the judgment of the ***municipal*** engineer, at least **[ninety percent]** *90%* (based on the cost of the required improvements for which financial security was posted pursuant to section 509) of those improvements required as a condition for final approval have been completed in accordance with the approved plan, so that the project will be able to be used, occupied or operated for its intended use.

"Transferable development rights," the attaching of development rights to specified lands which are desired by a municipality to be kept undeveloped, but permitting those rights to be transferred from those lands so that the development potential which they represent may occur on other lands within the municipality where more intensive development is deemed by the municipality to be appropriate.

"Variance," relief granted pursuant to the provisions of Articles VI and IX.

"Water survey," an inventory of the source, quantity, yield and use of groundwater and surface-water resources within a municipality.

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

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

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

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

(1) the governing body;

(2) the zoning hearing board; or

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

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

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

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

"Report," any letter, review, memorandum, compilation or similar writing made by any body, board, officer or consultant other than a solicitor to any other body, board, officer or consultant for the purpose of assisting the recipient of such report in the rendering of any decision or determination. All reports shall be deemed recommendatory and advisory only and shall not be binding upon the recipient, board, officer, body or agency, nor shall any appeal lie therefrom. Any report used, received or considered by the body, board, officer or agency rendering a determination or decision shall be made available for inspection to the applicant and all other parties to any proceeding upon request, and copies thereof shall be provided at cost of reproduction.

Section 8. The heading of Article II is reenacted to read:

ARTICLE II
Planning Agencies

Section 9. Sections 201, 202 and 203 of the act are reenacted and amended to read:

Section 201. Creation of Planning Agencies.—The governing body of any municipality shall have the power to create or abolish, by ordinance, a planning commission or planning department, or both. An ordinance which creates both a planning commission and a planning department shall specify which of the powers and duties conferred on planning agencies by this act; each shall exercise and may confer upon each additional powers, duties and advisory functions not inconsistent with this act. In lieu of a planning commission or planning department, the governing body may elect to assign the powers and duties conferred by this act upon a planning committee comprised of members appointed from the governing body. The engineer for the municipality, or an engineer appointed by the governing body, shall serve the planning agency as engineering advisor. ***The solicitor for the municipality, or an attorney appointed by the governing body, shall serve the planning agency as legal advisor.***

Section 202. Planning Commission.—If the governing body of any municipality shall elect to create a planning commission, such commission shall have not less than three nor more than nine members. All members of the commission shall serve without compensation, but may be reimbursed for necessary and reasonable expenses. However, elected or appointed officers or **[employes]** ***employees*** of the municipality shall not, by reason of membership thereon, forfeit the right to exercise the powers, perform the duties or receive the compensations of the municipal offices held by them during such membership.

Section 203. Appointment, Term and Vacancy.—***(a)*** All members of the commission shall be appointed by the appointing authority of the municipality. All such appointments shall be approved by the governing body, except where the governing body is the appointing authority.

(b) The term of each of the members of the commission shall be for four years, or until his successor is appointed and qualified, except that the terms of the members first appointed pursuant to this act shall be so fixed that on commissions of eight members or less no more than two shall be reappointed or replaced during any future calendar year, and on commissions of nine members no more than three shall be so reappointed or replaced.

(c) The chairman of the planning commission shall promptly notify the appointing authority of the municipality concerning vacancies in the commission, and such vacancy shall be filled for the unexpired term. ***If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term according to the terms of this article.***

(d) Should the governing body of any municipality determine to increase the number of members of an already existing planning commission, the additional members shall be appointed as provided in this article. If the gov-

erning body of any municipality shall determine to reduce the number of members on any existing planning commission, such reduction shall be effectuated by allowing the terms to expire and by making no new appointments to fill the vacancy. Any reduction or increase shall be by ordinance.

Section 10. Section 204 of the act is repealed.

Section 11. Sections 205 and 206 of the act are reenacted and amended to read:

Section 205. Membership.—All of the members of the planning commission shall be residents of the municipality. On all planning commissions appointed pursuant to this act, a certain number of the members, designated as citizen members shall not be officers or **[employes]** *employees* of the municipality. On a commission of three members at least two shall be citizen members. On a commission of four or five members at least three shall be citizen members. On a commission of either six or seven members at least five shall be citizen members, and on commissions of either eight or nine members at least six shall be citizen members.

Section 206. Removal.—Any member of a planning commission once qualified and appointed may be removed from office for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the governing body **[which appointed the member,]** taken after the member has received **[fifteen]** *15* days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing. Any appointment to fill a vacancy created by removal shall be only for the unexpired term.

Section 12. Sections 207 and 208 of the act are reenacted to read:

Section 207. Conduct of Business.—The commission shall elect its own chairman and vice-chairman and create and fill such other offices as it may determine. Officers shall serve annual terms and may succeed themselves. The commission may make and alter by laws and rules and regulations to govern its procedures consistent with the ordinances of the municipality and the laws of the Commonwealth. The commission shall keep a full record of its business and shall annually make a written report by March 1 of each year of its activities to the governing body. Interim reports may be made as often as may be necessary, or as requested by the governing body.

Section 208. Planning Department Director.—For the administration of each planning department, the appointing authority may appoint a director of planning who shall be, in the opinion of the appointing authority, qualified for the duties of his position. Each such appointment shall be with the approval of the governing body, except where the governing body is the appointing authority. The director of planning shall be in charge of the administration of the department, and shall exercise the powers and be subject to the duties that are granted or imposed on a planning agency by this act, except that where a municipality creates both a planning commission and a planning department, the director of planning shall exercise only those powers and be subject to only those duties which are specifically conferred upon him by ordinance enacted pursuant to this article.

Section 13. Section 209.1 of the act, added June 1, 1972 (P.L.333, No.93) and amended June 23, 1982 (P.L.613, No.173), is reenacted and amended to read:

Section 209.1. Powers and Duties of Planning Agency.—(a) The planning agency shall at the request of the governing body have the power and shall be required to:

(1) Prepare the comprehensive plan for the development of the municipality as set forth in this act, and present it for the consideration of the governing body**[;]**.

(2) Maintain and keep on file records of its action. All records and files of the planning agency shall be in the possession of the governing body.

(b) The planning agency at the request of the governing body may:

(1) Make recommendations to the governing body concerning the adoption or amendment of an official map**[;]**.

(2) Prepare and present to the governing body of the municipality a zoning ordinance, and make recommendations to the governing body on proposed amendments to it as set forth in this act**[;]**.

(3) Prepare, recommend and administer subdivision and land development**[,]** ***and*** planned residential development regulations, as set forth in this act**[;]**.

(4) Prepare and present to the governing body of the municipality a building code and a housing code and make recommendations concerning proposed amendments thereto**[;]**.

(5) Do such other **[act]** ***acts*** or make such studies as may be necessary to fulfill the duties and obligations imposed by this act**[;]**.

(6) Prepare and present to the governing body of the municipality an environmental study**[;]**.

(7) Submit to the **[appointing authority]** ***governing body*** of a municipality a recommended capital improvements program**[;]**.

(7.1) Prepare and present to the governing body of the municipality a water survey, which shall be consistent with the State Water Plan and any applicable water resources plan adopted by a river basin commission. The water survey shall be conducted in consultation with any public water supplier in the area to be surveyed.

(8) Promote public interest in, and understanding of, the comprehensive plan and planning**[;]**.

(9) Make recommendations to governmental, civic and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals**[;]**.

(10) Hold public hearings and meetings**[;]**.

(10.1) Present testimony before any board.

(11) Require from other departments and agencies of the municipality such available information as relates to the work of the planning agency**[;]**.

(12) In the performance of its functions, enter upon any land to make examinations and surveys with the consent of the owner.

(13) Prepare and present to the governing body of the municipality a study regarding the feasibility and practicability of using renewable energy sources in specific areas within the municipality.

(14) Review the zoning ordinance, subdivision and land development ordinance, official map, provisions for planned residential development, and such other ordinances and regulations governing the development of land no less frequently than it reviews the comprehensive plan.

[(c) In the performance of its powers and duties, any act or recommendation of the planning agency which involves engineering consideration, shall be subject to review and comments of the engineer, which shall be incorporated and separately set forth in any report, written act or recommendation of the planning agency.]

Section 14. Section 210 of the act is reenacted and amended to read:

Section 210. Administrative and Technical Assistance.—The appointing authority may employ administrative and technical services to aid in carrying out the provisions of this act either as consultants on particular matters or as regular **[employes]** *employees* of the municipality. A county planning agency, with the consent of its governing body may perform planning services for any **[city, borough, incorporated town or township]** *municipality* whose governing body requests such assistance and may enter into agreements or contracts for such work.

Section 15. Section 211 of the act is reenacted to read:

Section 211. Assistance.—The planning agency may, with the consent of the governing body, accept and utilize any funds, personnel or other assistance made available by the county, the Commonwealth or the Federal government or any of their agencies, or from private sources. The governing body may enter into agreements or contracts regarding the acceptance or utilization of the funds or assistance in accordance with the governmental procedures of the municipality.

Section 16. The heading of Article III is reenacted to read:

ARTICLE III
Comprehensive Plan

Section 17. Section 301 of the act, amended June 1, 1972 (P.L.333, No.93), is reenacted and amended to read:

Section 301. Preparation of Comprehensive Plan.—*(a)* The comprehensive plan, consisting of maps, charts and textual matter, shall **[indicate the recommendations of the planning agency for the continuing development of the municipality. The comprehensive plan shall]** include, but need not be limited to, the following related basic elements:

(1) A statement of objectives of the municipality concerning its future development**[;]**, *including, but not limited to, the location, character and timing of future development, that may also serve as a statement of community development objectives as provided in section 606.*

(2) A plan for land use, which may include *provisions for* the amount, intensity, **[and]** character *and timing* of land use proposed for residence, industry, business, agriculture, major traffic and transit facilities, *utilities,*

community facilities, public grounds, *parks and recreation, preservation of prime agricultural lands,* flood **[plans]** *plains* and other areas of special hazards and other similar uses**[;]**.

(2.1) A plan to meet the housing needs of present residents and of those individuals and families anticipated to reside in the municipality, which may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods and the accommodation of expected new housing in different dwelling types and at appropriate densities for households of all income levels.

(3) A plan for movement of people and goods, which may include expressways, highways, local street systems, parking facilities, **[mass]** *pedestrian and bikeway systems, public* transit routes, terminals, airfields, port facilities, railroad facilities and other similar facilities or uses**[;]**.

(4) A plan for community facilities and utilities, which may include public and private education, recreation, municipal buildings, *fire and police stations,* libraries, *hospitals,* water supply**[, sewage disposal, refuse disposal,]** *and distribution, sewerage and waste treatment, solid waste management,* storm drainage, **[hospitals,]** *and flood plain management, utility corridors and associated facilities,* and other similar *facilities or* uses**[; and]**.

(4.1) A statement of the interrelationships among the various plan components, which may include an estimate of the environmental, energy conservation, fiscal, economic development and social consequences on the municipality.

(4.2) A discussion of short- and long-range plan implementation strategies, which may include implications for capital improvements programming, new or updated development regulations, and identification of public funds potentially available.

(5) A **[map or]** statement indicating the relationship of the **[municipality and its proposed development to adjacent municipalities and areas.]** *existing and proposed development of the municipality to the existing and proposed development and plans in contiguous municipalities, to the objectives and plans for development in the county of which it is a part, and to regional trends.*

(b) The comprehensive plan may include a plan for the reliable supply of water, considering current and future water resources availability, uses and limitations, including provisions adequate to protect water supply sources. Any such plan shall be consistent with the State Water Plan and any applicable water resources plan adopted by a river basin commission.

[In preparing the comprehensive plan the planning agency shall make careful surveys and studies of existing conditions and prospects for future growth in the municipality.]

Section 18. Section 301.1 of the act, added June 23, 1982 (P.L.613, No.173), is reenacted to read:

Section 301.1. Energy Conservation Plan Element.—To promote energy conservation and the effective utilization of renewable energy sources, the comprehensive plan may include an energy conservation plan element which

systematically analyzes the impact of each other component and element of the comprehensive plan on the present and future use of energy in the municipality, details specific measures contained in the other plan elements designed to reduce energy consumption and proposes other measures that the municipality may take to reduce energy consumption and to promote the effective utilization of renewable energy sources.

Section 19. The act is amended by adding sections to read:

Section 301.2. Surveys by Planning Agency.—In preparing the comprehensive plan, the planning agency shall make careful surveys, studies and analyses of housing, demographic, and economic characteristics and trends; amount, type and general location and interrelationships of different categories of land use; general location and extent of transportation and community facilities; natural features affecting development; natural, historic and cultural resources; and the prospects for future growth in the municipality.

Section 301.3. Submission of Plan to County Planning Agency.—If a county planning agency has been created for the county in which the municipality is located, then at least 45 days prior to the public hearing required in section 302 on the comprehensive plan or amendment thereof, the municipality shall forward a copy of that plan or amendment to the county planning agency for its comments. At the same time, the municipality shall also forward copies of the proposed plan or amendment to all contiguous municipalities and to the local school district for their review and comments.

Section 301.4. Compliance by Counties.—If a county does not have a comprehensive plan, then that county shall, within three years of the effective date of this act, prepare and adopt a comprehensive plan in accordance with the requirements of section 301. Municipal comprehensive plans which are adopted shall be generally consistent with the adopted county comprehensive plan.

Section 20. Section 302 of the act is reenacted and amended to read:

Section 302. Adoption of Comprehensive Plan *and Plan Amendments.—(a)* The governing body shall have the power to adopt and amend the comprehensive plan as a whole or in parts. Before adopting or amending a comprehensive plan, or any part thereof, **[there shall be at least one public hearing pursuant to public notice.]** *the planning agency shall hold at least one public meeting pursuant to public notice before forwarding the proposed comprehensive plan or amendment thereof to the governing body. In reviewing the proposed comprehensive plan, the governing body shall consider the review comments of the county, contiguous municipalities and the school district, as well as the public meeting comments and the recommendations of the municipal planning agency. The comments of the county, contiguous municipalities and the local school district shall be made to the governing body within 45 days of receipt, and the proposed plan or amendment thereto shall not be acted upon until such comment is received. If, however, the contiguous municipalities and the local school district fail to respond within 45 days, the governing body may proceed without their comments.*

(b) The governing body shall hold at least one public hearing pursuant to public notice. If, after the public hearing held upon the proposed plan or

amendment to the plan, the proposed plan or proposed amendment thereto is substantially revised, the governing body shall hold another public hearing, pursuant to public notice, before proceeding to vote on the plan or amendment thereto.

(c) The adoption of the comprehensive plan, or any part thereof, or any amendment thereto, shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the governing body. The resolution shall refer expressly to the maps, charts, textual matter, and other matters intended to form the whole or part of the plan, and the action shall be recorded on the adopted plan or part.

Section 21. Section 303 of the act, amended June 1, 1972 (P.L.333, No.93), is reenacted and amended to read:

Section 303. Legal Status of Comprehensive Plan Within the Jurisdiction that Adopted the Plan.—*(a)* Whenever the governing body, pursuant to **[public notice,]** ***the procedures provided in section 302,*** has adopted a comprehensive plan or any part thereof, any subsequent proposed action of the governing body, ***its departments, agencies and appointed authorities*** shall be submitted to the planning agency for its recommendations when the proposed action relates to:

(1) **[The]** *the* location, opening, vacation, extension, widening, narrowing or enlargement of any street, public ground, pierhead or watercourse;

(2) **[The]** *the* location, erection, demolition, removal or sale of any public structure located within the municipality; **[or]**

(3) **[The]** *the* adoption, amendment or repeal of an official map, subdivision and land development ordinance, zoning ordinance or ***provisions for*** planned residential development **[ordinances.]**, ***or capital improvements program; or***

(4) the construction, extension or abandonment of any water line, sewer line or sewage treatment facility.

(b) The recommendations of the planning agency including a specific statement as to whether or not the proposed action is in accordance with the **[intent]** ***objectives*** of the formally adopted comprehensive plan shall be made in writing to the governing body within **[thirty]** *45* days.

(c) Notwithstanding any other provision of this act, no action by the governing body of a municipality shall be invalid nor shall the same be subject to challenge or appeal on the basis that such action is inconsistent with, or fails to comply with, the provision of the comprehensive plan.

Section 22. Section 304 of the act, amended July 20, 1974 (P.L.566, No.194), is reenacted and amended to read:

Section 304. Legal Status of **[the]** County Comprehensive Plans Within Municipalities.—*(a)* Following the adoption of a comprehensive plan or any part thereof by a county, pursuant to **[a public notice]** ***the procedures in section 302,*** any proposed action of the governing body of a municipality, ***its departments, agencies and appointed authorities*** within the county **[relating to]** ***shall be submitted to the county planning agency for its recommendations if the proposed action relates to:***

[(i)] *(1)* the location, opening, vacation, extension, widening, narrowing or enlargement of any street, public ground, pierhead or watercourse;

[(ii)] *(2)* the location, erection, demolition, *removal* or sale of any public structures located within the municipality; **[or]**

[(iii)] *(3)* the adoption, amendment or repeal of any *comprehensive plan,* official map, subdivision or land ordinance, zoning ordinance or *provisions for* planned residential development **[ordinance shall be submitted to the county planning agency for its recommendations]**; *or*

(4) the construction, extension or abandonment of any water line, sewer line or sewage treatment facility.

(b) The recommendation of the planning agency shall be made to the governing body of the municipality within **[forty-five]** *45* days and the proposed action shall not be taken until such recommendation is made. If, however, the planning agency fails to act within **[forty-five]** *45* days, the governing body shall proceed without its recommendation.

Section 23. Section 305 of the act, amended June 1, 1972 (P.L.333, No.93), is reenacted and amended to read:

Section 305. The Legal Status of Comprehensive Plans Within School Districts.—Following the adoption of a comprehensive plan or any part thereof by any municipality or county governing body, pursuant to **[public notice]** *the procedures in section 302*, any proposed action of the governing body of any *public* school district located within the municipality or county relating to the location, demolition, removal **[or sale]**, *sale or lease* of any school district structure or land shall be submitted to the municipal and county planning **[agency]** *agencies* for their recommendations at least **[thirty]** *45* days prior to the execution of such proposed action by the governing body of the school district.

Section 24. Section 306 of the act is reenacted and amended to read:

Section 306. Municipal and County Comprehensive Plans.—*(a)* When a **[city, borough, incorporated town or township]** *municipality* having a comprehensive plan is located in a county which has adopted a comprehensive plan, both the county and the **[city, borough, incorporated town or township]** *municipality* shall each give the plan of the other consideration in order that the objectives of each plan can be protected to the greatest extent possible.

(b) Within 30 days after adoption, the governing body of a municipality, other than a county, shall forward a certified copy of the comprehensive plan, or part thereof or amendment thereto, to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

Section 25. The heading of Article IV is reenacted to read:

ARTICLE IV
Official Map

Section 26. Section 401 of the act is reenacted and amended to read:

Section 401. Grant of Power.—*(a)* The governing body of each municipality shall have the power to make or cause to be made **[surveys of the exact location of the lines of existing and proposed public streets, watercourses and public grounds, including widenings, narrowings, extensions, diminutions, openings or closing of same, for the whole of the municipality and, by ordinance, to adopt such surveys as the official map, or part thereof, of the municipality. The governing body, by amending ordinances, may make additions or modifications to the official map, or part thereof, by adopting surveys of the exact location of the lines of the public streets, watercourses or public grounds to be so added or modified and may also vacate any existing or proposed public street, watercourse or public ground contained in the official map, or part thereof.]** *an official map of all or a portion of the municipality which may show appropriate elements or portions of elements of the comprehensive plan adopted pursuant to section 302 with regard to public lands and facilities, and which may include, but need not be limited to:*

(1) Existing and proposed public streets, watercourses and public grounds, including widenings, narrowings, extensions, diminutions, openings or closing of same.

(2) Existing and proposed public parks, playgrounds and open space reservations.

(3) Pedestrian ways and easements.

(4) Railroad and transit rights-of-way and easements.

(5) Flood control basins, floodways and flood plains, storm water management areas and drainage easements.

(6) Support facilities, easements and other properties held by public bodies undertaking the elements described in section 301.

(b) For the purposes of taking action under this section, the governing body or its authorized designee may make or cause to be made surveys and maps to identify, for the regulatory purposes of this article, the location of property, trafficway alignment or utility easement by use of property records, aerial photography, photogrammetric mapping or other method sufficient for identification, description and publication of the map components. For acquisition of lands and easements, boundary descriptions by metes and bounds shall be made and sealed by a licensed surveyor.

Section 27. Section 402 of the act, amended June 1, 1972 (P.L.333, No.93), is reenacted and amended to read:

Section 402. Adoption of the Official Map and Amendments Thereto.—*(a)* Prior to the adoption of **[any survey of existing or proposed public streets, watercourses or public grounds as]** the official map or part thereof, or any amendments to the official map, the governing body shall refer **[such surveys and amendments]** *the proposed official map, or part thereof or amendment thereto, with an accompanying ordinance describing the proposed map,* to the planning agency for review. The planning agency shall report its recommendations on said proposed official map *and accompanying ordinance*, part thereof, or amendment thereto within **[forty]** *45* days unless an extension of time shall be agreed to by the governing body. **[Before**

voting on the enactment of the proposed official map, part thereof, or amendment thereto, the governing body shall hold a public hearing thereon after giving public notice of such hearing.] ***If, however, the planning agency fails to act within 45 days, the governing body may proceed without its recommendations.***

(b) The county and adjacent municipalities may offer comments and recommendations during said 45-day review period in accordance with section 408. Local authorities, park boards, environmental boards and similar public bodies may also offer comments and recommendations to the governing body or planning agency if requested by same during said 45-day review period. Before voting on the enactment of the proposed ordinance and official map, or part thereof or amendment thereto, the governing body shall hold a public hearing pursuant to public notice.

(c) Following adoption of the ordinance and official map, or part thereof or amendment thereto, a copy of same, verified by the governing body, shall be submitted to the recorder of deeds of the county in which the municipality is located and shall be recorded within 60 days of the effective date. The fee for recording and indexing ordinances and amendments shall be paid by the municipality enacting the ordinance or amendment and shall be in the amount prescribed by law for the recording of ordinances by the recorder of deeds.

Section 28. Sections 403, 404, 405, 406, 407 and 408 of the act are reenacted and amended to read:

Section 403. Effect of Approved Plats on Official Map.—After adoption of the official map, or part thereof, all streets, watercourses and public grounds ***and the elements listed in section 401*** on final, recorded plats which have been approved as provided by this act shall be deemed amendments to the official map. Notwithstanding any of the other terms of this article, no public hearing need be held or notice given if the amendment of the official map is the result of the addition of a plat which has been approved as provided by this act**[:]**.

Section 404. Effect of Official Map on Mapped Streets, Watercourses and Public Grounds.—The adoption of any street **[or]**, street lines ***or other public lands pursuant to this article*** as part of the official map shall not, in and of itself, constitute or be deemed to constitute the opening or establishment of any street nor the taking or acceptance of any land **[for street purposes]**, nor shall it obligate the municipality to improve or maintain any such street ***or land***. The adoption of proposed watercourses or public grounds as part of the official map shall not, in and of itself, constitute or be deemed to constitute a taking or acceptance of any land by the municipality.

Section 405. Buildings in Mapped Streets, Watercourses**[, and]** ***or Other*** Public Grounds.—For the purpose of preserving the integrity of the official map of the municipality, no permit shall be issued for any building within the lines of any street, watercourse or public ground shown or laid out on the official map. No person shall recover any damages for the taking for public use of any building or improvements constructed within the lines of any street, watercourse or public ground after the same shall have been included

in the official map, and any such building or improvement shall be removed at the expense of the owner. However, when the property of which the reserved location forms a part, cannot yield a reasonable return to the owner unless a permit shall be granted, the owner may apply to the governing body for the grant of a *special encroachment* permit to **[so]** build. Before granting any *special encroachment* permit authorized in this section, the governing body *may submit the application for a special encroachment permit to the local planning agency and allow the planning agency 30 days for review and comment and* shall give public notice and hold a public hearing at which all parties in interest shall have an opportunity to be heard. A refusal by the governing body to grant the *special encroachment* permit applied for may be appealed by the applicant to **[court]** *the zoning hearing board* in the same manner, and within the same time limitation, as is provided **[for zoning appeals by this act]** *in Article IX*.

Section 406. Time Limitations on Reservations for Future Taking.—The governing body may fix the time for which streets, watercourses and public grounds on the official map shall be deemed reserved for future taking or acquisition for public use. **[However, the reservation for public grounds shall lapse and become void one year after an owner of such property has submitted a written notice to the governing body announcing his intentions to build, subdivide or otherwise develop the land covered by the reservation, or has made formal application for an official permit to build a structure for private use, unless the governing body shall have acquired the property, or begun condemnation proceedings to acquire such property before the end of the year.]** *However, the reservation for public grounds shall lapse and become void one year after an owner of such property has submitted a written notice to the governing body announcing his intentions to build, subdivide or otherwise develop the land covered by the reservation, or has made formal application for an official permit to build a structure for private use, unless the governing body shall have acquired the property or begun condemnation proceedings to acquire such property before the end of the year.*

Section 407. Release of Damage Claims or Compensation.—**[The governing body may designate any of its agencies to negotiate with the owner of land whereon reservations are made, releases of claims for damages or compensation for such reservations, or agreements, indemnifying the governing body from such claims by others, which releases or agreements when properly executed by the governing body and the owner and recorded shall be binding upon the successor in title.]** *The governing body may designate any of its agencies to negotiate with the owner of land under the following circumstances:*

(1) whereon reservations are made;

(2) whereon releases of claims for damages or compensation for such reservations are required; or

(3) whereon agreements indemnifying the governing body from claims by others may be required.

Any releases or agreements, when properly executed by the governing body and the owner and recorded, shall be binding upon any successor in title.

Section 408. Notice to Other Municipalities.—*(a)* When any county has adopted an official map in accordance with the terms of this article, a certified copy of the map and the ordinances adopting it shall be sent to every **[city, borough, incorporated town and township]** ***municipality*** within said county. All amendments shall be sent to the aforementioned municipalities. The powers of the governing bodies of counties to adopt, amend and repeal official maps shall be limited to land and watercourses in those **[cities, boroughs, incorporated towns and townships]** ***municipalities*** wholly or partly within the county which have no official map in effect at the time an official map is introduced before the governing body of the county, and until the **[city, borough, incorporated town or township]** ***municipal*** official map is in effect. The adoption of an official map by any municipality, other than a county, whose land or watercourses are subject to county official mapping, shall act as a repeal protanto of the county official map within the municipality adopting such ordinance. Notwithstanding any of the other terms or conditions of this section the county official map shall govern as to county streets and public grounds, ***facilities and improvements,*** even though such streets or public grounds, ***facilities and improvements*** are located in a municipality which has adopted an official map.

(b) When a **[city, borough, incorporated town or township within a county which has adopted an official map also adopts such]** ***municipality proposes to adopt*** an official map, ***or any amendment thereto,*** a **[certified]** copy of the map**[,]** ***and*** the ***proposed*** ordinance adopting it **[and any later amendments]**, ***or any amendment thereto,*** shall be forwarded ***for review*** to the county planning agency, or if no such agency exists to the governing body of the county**[.]** ***at the same time it is submitted for review to the municipal planning agency. The comments of the county planning agency shall be made to the governing body of the municipality within 45 days, and the proposed action shall not be taken until such comments are received. If, however, the planning agency fails to act within 45 days, the governing body may proceed without its comments.***

(c) Additionally, if any municipality **[adopts]** ***proposes to adopt*** an official map, or amendment thereto, that shows any street ***or public lands*** intended to lead into any adjacent municipality a **[certified]** copy of said official map or amendment shall be forwarded to such adjacent municipality**[.]** ***for review and comment by the governing body and planning agency of the adjacent municipality. The comments of the adjacent municipality shall be made to the governing body of the municipality proposing the adoption within 45 days, and the proposed action shall not be taken until such comments are received. If, however, the adjacent municipality fails to act within 45 days, the governing body of the proposing municipality may proceed without its comments. When a municipality adopts an official map, a certified copy of the map, the ordinance adopting it and any later amendments shall be forwarded, within 30 days after adoption, to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located. Additionally, if any municipality adopts an official map, or amendment thereto, that shows any***

street or public lands intended to lead into any adjacent municipality, a certified copy of said official map or amendment shall be forwarded to such adjacent municipality.

Section 29. The heading of Article V is reenacted to read:

ARTICLE V
Subdivision and Land Development

Section 30. Section 501 of the act, amended June 1, 1972 (P.L.333, No.93), is reenacted and amended to read:

Section 501. Grant of Power.—The governing body of each municipality may regulate subdivisions and land development within the municipality by enacting a subdivision and land development ordinance. The ordinance **[may]** ***shall*** require that all ***subdivision and land development*** plats of land **[lying]** ***situated*** within the municipality shall be submitted for approval to the governing body or in lieu thereof to a planning agency designated in the ordinance for this purpose. All powers granted herein to the governing body or the planning agency shall be exercised in accordance with the provisions of the subdivision and land development ordinance. In the case of any development governed by **[an ordinance]** ***planned residential development provisions*** adopted pursuant to Article VII, however, the applicable provisions of the subdivision and land development ordinance shall be as modified by such **[ordinance]** ***provisions*** and the procedures which shall be followed in the approval of any plat, and the rights and duties of the parties thereto shall be governed by Article VII and the provisions **[of the ordinance]** adopted thereunder. Provisions regulating mobilehome parks shall be set forth in separate and distinct articles of any subdivision and land development ordinance adopted pursuant to Article V, or any planned residential development **[ordinance]** ***provisions*** adopted pursuant to Article VII.

Section 31. Section 502 of the act, amended July 20, 1974 (P.L.566, No.194), is reenacted and amended to read:

Section 502. Jurisdiction of County Planning Agencies; Adoption by Reference of County Subdivision and Land Development Ordinances.—***(a)*** When any county has adopted a subdivision and land development ordinance in accordance with the terms of this article, a certified copy of the ordinance shall be sent to every **[city, borough, incorporated town or township]** ***municipality*** within the county. All amendments shall also be sent to the aforementioned municipalities. The powers of governing bodies of counties to enact, amend and repeal subdivision and land development ordinances shall be limited to land in those **[cities, boroughs, incorporated towns and townships]** ***municipalities*** wholly or partly within the county which have no subdivision and land development ordinance in effect at the time a subdivision and land development ordinance is introduced before the governing body of the county, and until the **[city, borough, incorporated town or township]** ***municipal*** subdivision and land development ordinance is in effect and a certified copy of such ordinance is filed with the county planning agency, if one exists.

(b) The enactment of a subdivision and land development ordinance by any municipality, other than a county, whose land is subject to a county subdivision and land development ordinance shall act as a repeal protanto of the county subdivision and land development ordinance within the municipality adopting such ordinance. However, applications for subdivision and land development located within a **[city, borough, incorporated town or township]** ***municipality*** having adopted a subdivision and land development ordinance as set forth in this article shall be forwarded upon receipt by the municipality to the county planning agency for review and report together with a fee sufficient to cover the costs of the review and report which fee shall be paid by the applicant: Provided, That such municipalities shall not approve such applications until the county report is received or until the expiration of **[forty-five]** ***30*** days from the date the application was forwarded to the county.

(c) Further, any municipality other than a county may adopt by reference the subdivision and land development ordinance of the county, and may by separate ordinance designate the county planning agency, ***with the county planning agency's concurrence,*** as its official administrative agency for review and approval of plats.

Section 32. Section 503 of the act, amended June 9, 1978 (P.L.460, No.60) and June 23, 1982 (P.L.613, No.173), is reenacted and amended to read:

Section 503. Contents of Subdivision and Land Development Ordinance.—The subdivision and land development ordinance may include, but need not be limited to:

(1) Provisions for the submittal and processing of plats, ***including the charging of review fees,*** and specifications for such plats, including ***certification as to the accuracy of plats and*** provisions for preliminary and final approval and for processing of final approval by stages or sections of development. ***Such plats and surveys shall be prepared in accordance with the act of May 23, 1945 (P.L.913, No.367), known as the "Professional Engineers Registration Law." Review fees may include reasonable and necessary charges by the municipality's professional consultants or engineer for review and report thereon to the municipality. Such review fees shall be based upon a schedule established by ordinance or resolution. Such review fees shall be reasonable and in accordance with the ordinary and customary charges by the municipal engineer or consultant for similar service in the community, but in no event shall the fees exceed the rate or cost charged by the engineer or consultant to the municipalities when fees are not reimbursed or otherwise imposed on applicants.***

(i) In the event the applicant disputes the amount of any such review fees, the applicant shall, within ten days of the billing date, notify the municipality that such fees are disputed, in which case the municipality shall not delay or disapprove a subdivision or land development application due to the applicant's request over disputed fees.

(ii) In the event that the municipality and the applicant cannot agree on the amount of review fees which are reasonable and necessary,

then the applicant and the municipality shall follow the procedure for dispute resolution set forth in section 510(g).

(1.1) Provisions for the exclusion of certain land development from the definition of land development contained in section 107 only when such land development involves:

(i) the conversion of an existing single-family detached dwelling or single family semi-detached dwelling into not more than three residential units, unless such units are intended to be a condominium;

(ii) the addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; or

(iii) the addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park. For purposes of this subclause, an amusement park is defined as a tract or area used principally as a location for permanent amusement structures or rides. This exclusion shall not apply to newly acquired acreage by an amusement park until initial plans for the expanded area have been approved by proper authorities.

(2) Provisions for insuring that:

(i) the layout or arrangement of the subdivision or land development shall conform to the comprehensive plan and to any regulations or maps adopted in furtherance thereof;

(ii) streets in and bordering a subdivision or land development shall be coordinated, and be of such widths and grades and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection;

(iii) adequate easements or rights-of-way shall be provided for drainage and utilities;

(iv) reservations if any by the developer of any area designed for use as public grounds shall be suitable size and location for their designated uses; *and*

(v) **[and]** land which is subject to flooding, subsidence or underground fires either shall be made safe for the purpose for which such land is proposed to be used, or that such land shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing menace.

(3) Provisions governing the standards by which streets shall be *designed,* graded and improved, and walkways, curbs, gutters, street lights, fire hydrants, water and sewage facilities and other improvements shall be installed as a condition precedent to final approval of plats *in accordance with the requirements of section 509.* The standards shall insure that the streets be improved to such a condition that the streets are passable for vehicles which are intended to use that street: Provided, however, That no municipality shall be required to accept such streets for public dedication until the streets meet such additional standards and specifications as the municipality may require for public dedication.

(4) Provisions which take into account *phased* land development not intended for the immediate erection of buildings where streets, curbs,

gutters, street lights, fire hydrants, water and sewage facilities and other improvements may not be possible to install as a condition precedent to final approval of plats, but will be a condition precedent to the erection of buildings on lands included in the approved plat.

(4.1) Provisions which apply uniformly throughout the municipality regulating minimum setback lines and minimum lot sizes which are based upon the availability of water and sewage, in the event the municipality has not enacted a zoning ordinance.

(5) Provisions for encouraging and promoting flexibility, economy and ingenuity in the layout and design of subdivisions and land developments, including provisions authorizing **[the planning agency to alter]** *alterations in* site requirements and for encouraging other practices which are in accordance with modern and evolving principles of site planning and development.

(6) Provisions for encouraging the use of renewable energy systems and energy-conserving building design.

(7) Provisions for soliciting reviews and reports from adjacent municipalities and other governmental agencies affected by the plans.

(8) Provisions for administering waivers or modifications to the minimum standards of the ordinance in accordance with section 512.1, when the literal compliance with mandatory provisions is shown to the satisfaction of the governing body or planning agency, where applicable, to be unreasonable, to cause undue hardship, or when an alternative standard can be demonstrated to provide equal or better results.

(9) Provisions for the approval of a plat, whether preliminary or final, subject to conditions acceptable to the applicant and a procedure for the applicant's acceptance or rejection of any conditions which may be imposed, including a provision that approval of a plat shall be rescinded automatically upon the applicant's failure to accept or reject such conditions within such time limit as may be established by the governing ordinance.

(10) Provisions and standards for insuring that new developments incorporate adequate provisions for a reliable, safe and adequate water supply to support intended uses within the capacity of available resources.

(11) Provisions requiring the public dedication of land suitable for the use intended; and, upon agreement with the applicant or developer, the construction of recreational facilities, the payment of fees in lieu thereof, the private reservation of the land, or a combination, for park or recreation purposes as a condition precedent to final plan approval, provided that:

(i) The provisions of this paragraph shall not apply to any plan application, whether preliminary or final, pending at the time of enactment of such provisions.

(ii) The ordinance includes definite standards for determining the proportion of a development to be dedicated and the amount of any fee to be paid in lieu thereof.

(iii) The land or fees, or combination thereof, are to be used only for the purpose of providing park or recreational facilities accessible to the development.

(iv) The governing body has a formally adopted recreation plan, and the park and recreational facilities are in accordance with definite principles and standards contained in the subdivision and land development ordinance.

(v) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by future inhabitants of the development or subdivision.

(vi) A fee authorized under this subsection shall, upon its receipt by a municipality, be deposited in an interest-bearing account, clearly identifying the specific recreation facilities for which the fee was received. Interest earned on such accounts shall become funds of that account. Funds from such accounts shall be expended only in properly allocable portions of the cost incurred to construct the specific recreation facilities for which the funds were collected.

(vii) Upon request of any person who paid any fee under this subsection, the municipality shall refund such fee, plus interest accumulated thereon from the date of payment, if the municipality had failed to utilize the fee paid for the purposes set forth in this section within three years from the date such fee was paid.

(viii) No municipality shall have the power to require the construction of recreational facilities or the dedication of land, or fees in lieu thereof, or private reservation except as may be provided by statute.

Section 33. The act is amended by adding a section to read:

Section 503.1. Water Supply.—Every ordinance adopted pursuant to this article shall include a provision that, if water is to be provided by means other than by private wells owned and maintained by the individual owners of lots within the subdivision or development, applicants shall present evidence to the governing body or planning agency, as the case may be, that the subdivision or development is to be supplied by a certificated public utility, a bona fide cooperative association of lot owners, or by a municipal corporation, authority or utility. A copy of a Certificate of Public Convenience from the Pennsylvania Public Utility Commission or an application for such certificate, a cooperative agreement or a commitment or agreement to serve the area in question, whichever is appropriate, shall be acceptable evidence.

Section 34. Sections 504, 505 and 506 of the act are reenacted and amended to read:

Section 504. Enactment of Subdivision and Land Development Ordinance.—*(a)* Before voting on the enactment of a proposed subdivision and land development ordinance, the governing body shall hold a public hearing thereon pursuant to public notice. A brief summary setting forth the principal provisions of the proposed ordinance and a reference to the place within the municipality where copies of the proposed ordinance may be secured or examined shall be incorporated in the public notice. Unless the proposed

subdivision and land development ordinance shall have been prepared by the planning agency, the governing body shall submit the ordinance to the planning agency at least **[forty]** *45* days prior to the hearing on such ordinance to provide the planning agency an opportunity to submit recommendations. *If a county planning agency shall have been created for the county in which the municipality adopting the ordinance is located, then, at least 45 days prior to the public hearing on the ordinance, the municipality shall submit the proposed ordinance to said county planning agency for recommendations.*

(b) Within 30 days after adoption, the governing body of a municipality, other than a county, shall forward a certified copy of the subdivision and land development ordinance to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

Section 505. Enactment of Subdivision and Land Development Ordinance Amendment.—*(a)* Amendments to the subdivision and land development ordinance shall become effective only after a public hearing held pursuant to public notice in the manner prescribed for enactment of a proposed ordinance by this article. In addition, in case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency for recommendations at least **[thirty]** *30* days prior to the date fixed for the public hearing on such proposed amendment. *If a county planning agency shall have been created for the county in which the municipality proposing the amendment is located, then, at least 30 days prior to the hearing on the amendment, the municipality shall submit the proposed amendment to said county planning agency for recommendations.*

(b) Within 30 days after adoption, the governing body of a municipality, other than a county, shall forward a certified copy of any amendment to the subdivision and land development ordinance to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

Section 506. **[Publication After Enactment.—After enactment, if the advertisement of a subdivision and land development ordinance or amendment is required by other laws respecting the advertisement of ordinances, such advertisements may consist solely of a reference to the place or places, within the municipality where copies of such ordinance or amendment shall be obtainable for a charge not greater than the cost thereof and available for examination without charge. Subdivision and land development ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.]** *Publication, Advertisement and Availability of Ordinance.—(a) Proposed subdivision and land development ordinances and amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost thereof. The gov-*

erning body shall publish the proposed ordinance or amendment once in one newspaper of general circulation in the municipality not more than 60 days nor less than seven days prior to passage. Publication of the proposed ordinance or amendment shall include either the full text thereof or the title and a brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:

(1) A copy thereof shall be supplied to a newspaper of general circulation in the municipality at the time the public notice is published.

(2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances.

(b) In the event substantial amendments are made in the proposed ordinance or amendment, before voting upon enactment, the governing body shall, at least ten days prior to enactment, readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

(c) Subdivision and land development ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

Section 35. Section 507 of the act is reenacted to read:

Section 507. Effect of Subdivision and Land Development Ordinance.—Where a subdivision and land development ordinance has been enacted by a municipality under the authority of this article no subdivision or land development of any lot, tract or parcel of land shall be made, no street, sanitary sewer, storm sewer, water main or other improvements in connection therewith shall be laid out, constructed, opened or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with the provisions of such ordinance.

Section 36. Section 508 of the act, amended June 1, 1972 (P.L.333, No.93), April 18, 1978 (P.L.38, No.20), June 9, 1982 (P.L.441, No.130) and May 2, 1986 (P.L.137, No.42), is reenacted and amended to read:

Section 508. Approval of Plats.—All applications for approval of a plat (other than those governed by Article VII), whether preliminary or final, shall be acted upon by the governing body or the planning agency within such time limits as may be fixed in the subdivision and land development ordinance but the governing body or the planning agency shall render its decision and communicate it to the applicant not later than **[ninety]** ***90*** days following the date of the regular meeting of the governing body or the planning agency (whichever first reviews the application) next following the date the application is filed, provided that should the said next regular meeting occur more than **[thirty]** ***30*** days following the filing of the application, the said **[ninety-day]** ***90-day*** period shall be measured from the **[thirtieth]** ***30th*** day following the day the application has been filed.

(1) The decision of the governing body or the planning agency shall be in writing and shall be communicated to the applicant personally or mailed to him at his last known address not later than **[fifteen]** ***15*** days following the decision**[;]**.

(2) When the application is not approved in terms as filed the decision shall specify the defects found in the application and describe the requirements which have not been met and shall, in each case, cite to the provisions of the statute or ordinance relied upon**[;]**.

(3) Failure of the governing body or agency to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the application in terms as presented unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of presentation of communication of the decision, in which case, failure to meet the extended time or change in manner of presentation of communication shall have like effect**[;]**.

(4) ***Changes in the ordinance shall affect plats as follows:***

(i) From the time an application for approval of a plat, whether preliminary or final, is duly filed as provided in the subdivision and land development ordinance, and while such application is pending approval or disapproval, no change or amendment of the zoning, subdivision or other governing ordinance or plan shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed. In addition, when a preliminary application has been duly approved, the applicant shall be entitled to final approval in accordance with the terms of the approved preliminary application as hereinafter provided. However, if an application is properly and finally denied, any subsequent application shall be subject to the intervening change in governing regulations.

(ii) When an application for approval of a plat, whether preliminary or final, has been approved ***without conditions*** or approved **[subject to conditions acceptable to the applicant]** ***by the applicant's acceptance of conditions***, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied to affect adversely the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within five years from such approval.

(iii) Where final approval is preceded by preliminary approval, the ***aforesaid*** five-year period shall be counted from the date of the preliminary approval. In the case of any doubt as to the terms of a preliminary approval, the terms shall be construed in the light of the provisions of the governing ordinances or plans as they stood at the time when the application for such approval was duly filed.

(iv) Where the landowner has substantially completed the required improvements as depicted upon the final plat within the aforesaid five-year limit, or any extension thereof as may be granted by the governing body, no change of municipal ordinance or plan enacted subsequent to the date of filing of the preliminary plat shall modify or revoke any aspect of the approved final plat pertaining to zoning classification or density, lot, building, street or utility location.

(v) In the case of a preliminary plat calling for the installation of improvements beyond the five-year period, a schedule shall be filed by the landowner with the preliminary plat delineating all proposed sections as well as deadlines within which applications for final plat approval of each section are intended to be filed. Such schedule shall be updated annually by the applicant on or before the anniversary of the preliminary plat approval, until final plat approval of the final section has been granted and any modification in the aforesaid schedule shall be subject to approval of the governing body in its discretion.

(vi) Each section in any residential subdivision or land development, except for the last section, shall contain a minimum of **[twenty-five percent]** *25%* of the total number of dwelling units as depicted on the preliminary plan, unless a lesser percentage is approved by the governing body in its discretion. Provided the landowner has not defaulted with regard to or violated any of the conditions of the preliminary plat approval, including compliance with landowner's aforesaid schedule of submission of final plats for the various sections, then the aforesaid protections afforded by substantially completing the improvements depicted upon the final plat within five years shall apply and for any section or sections, beyond the initial section, in which the required improvements have not been substantially completed within said five-year period the aforesaid protections shall apply for an additional term or terms of three years from the date of final plat approval for each section.

(vii) Failure of landowner to adhere to the aforesaid schedule of submission of final plats for the various sections shall subject any such section to any and all changes in zoning, subdivision and other governing ordinance enacted by the municipality subsequent to the date of the initial preliminary plan submission.

(5) Before acting on any subdivision plat, *the* governing body or the planning agency, as the case may be, may hold a public hearing thereon after public notice.

(6) No plat which will require access to a highway under the jurisdiction of the Department of Transportation shall be finally approved unless the plat contains a notice that a highway occupancy permit is required pursuant to section 420 of the act of June 1, 1945 (P.L.1242, No.428), known as the "State Highway Law," before driveway access to a State highway is permitted. The department shall, within sixty days of the date of receipt of an application for a highway occupancy permit, (i) approve the permit, which shall be valid thereafter unless, prior to commencement of construction thereunder, the geographic, physical or other conditions under which the permit is approved change, requiring modification or denial of the permit, in which event the department shall give notice thereof in accordance with regulations, (ii) deny the permit, (iii) return the application for additional information or correction to conform with department regulations or (iv) determine that no permit is required in which case the department shall notify the municipality and the applicant in writing. If the

department shall fail to take any action within the **[sixty-day]** ***60-day*** period, the permit will be deemed to be issued. The plat shall be marked to indicate that access to the State highway shall be only as authorized by a highway occupancy permit. Neither the department nor any municipality to which permit-issuing authority has been delegated under section 420 of the "State Highway Law" shall be liable in damages for any injury to persons or property arising out of the issuance or denial of a driveway permit, or for failure to regulate any driveway. ***Furthermore, the municipality from which the building permit approval has been requested shall not be held liable for damages to persons or property arising out of the issuance or denial of a driveway permit by the department.***

(7) The municipality may offer a mediation option as an aid in completing proceedings authorized by this section. In exercising such an option, the municipality and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX.

Section 37. Section 509 of the act, amended December 19, 1980 (P.L.1293, No.231), is reenacted and amended to read:

Section 509. Completion of Improvements or Guarantee Thereof Prerequisite to Final Plat Approval.—***(a)*** No plat shall be finally approved unless the streets shown on such plat have been improved to a mud-free or otherwise permanently passable condition, or improved as may be required by the subdivision and land development ordinance and any walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm **[drains]** ***sewers*** and other improvements as may be required by the subdivision and land development ordinance have been installed in accordance with such ordinance. In lieu of the completion of any improvements required as a condition for the final approval of a plat, ***including improvements or fees required pursuant to section 509(i),*** the subdivision and land development ordinance shall provide for the deposit with the municipality of financial security in an amount sufficient to cover the costs of **[any]** ***such*** improvements or common amenities including, but not limited to, roads, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, or buffer or screen plantings which may be required.

(b) When requested by the developer, in order to facilitate financing, the governing body or the planning agency, if designated, shall furnish the developer with a signed copy of a resolution indicating approval of the final plat contingent upon the developer obtaining a satisfactory financial security. The final plat or record plan shall not be signed nor recorded until the financial improvements agreement is executed. The resolution or letter of contingent approval shall expire and be deemed to be revoked if the financial security agreement is not executed within 90 days unless a written extension is granted by the governing body; such extension shall not be unreasonably withheld and shall be placed in writing at the request of the developer.

(c) Without limitation as to other types of financial security which the municipality may approve, which approval shall not be unreasonably withheld, Federal or Commonwealth chartered lending institution irrevocable

letters of credit and restrictive or escrow accounts in such lending institutions shall be deemed acceptable financial security for the purposes of this section.

(d) Such financial security shall be posted with a bonding company or Federal or Commonwealth chartered lending institution chosen by the party posting the financial security, provided said bonding company or lending institution is authorized to conduct such business within the Commonwealth.

(e) Such bond, or other security shall provide for, and secure to the public, the completion of any improvements which may be required **[within one year of the date fixed in the subdivision plat for completion of such improvements]** ***on or before the date fixed in the formal action of approval or accompanying agreement for completion of the improvements.***

(f) The amount of financial security ***to be posted for the completion of the required improvements*** shall be equal to **[one hundred ten percent]** ***110%*** of the cost of **[the required improvements for which financial security is to be posted]** ***completion estimated as of 90 days following the date scheduled for completion by the developer. Annually, the municipality may adjust the amount of the financial security by comparing the actual cost of the improvements which have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the 90th day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the municipality may require the developer to post additional security in order to assure that the financial security equals said 110%. Any additional security shall be posted by the developer in accordance with this subsection.***

[The cost of the improvements shall be established by submission to the governing body or the planning agency of bona fide bid or bids from the contractor or contractors chosen by the party posting the financial security to complete the improvements or, in the absence of such bona fide bids, the costs shall be established by estimate prepared by the municipality's engineer.]

(g) The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or developer and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The municipality, upon the recommendation of the municipal engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and the municipality are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the municipality and the applicant or developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the municipality and the applicant or developer.

(h) If the party posting the financial security requires more than one year from the date of posting of the financial security to complete the required improvements, the amount of financial security may be increased by an addi-

tional **[ten percent]** ***10%*** for each one-year period beyond the first anniversary date from posting of financial security or to an amount not exceeding **[one hundred ten percent]** ***110%*** of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the above bidding procedure.

(i) In the case where development is projected over a period of years, the governing body or the planning agency may authorize submission of final plats by section or stages of development subject to such requirements or guarantees as to improvements in future sections or stages of development as it finds essential for the protection of any finally approved section of the development.

(j) As the work of installing the required improvements proceeds, the party posting the financial security may request the governing body to release or authorize the release, from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the governing body, and the governing body shall have **[forty-five]** ***45*** days from receipt of such request within which to allow the municipal engineer to certify, in writing, to the governing body that such portion of the work upon the improvements has been completed in accordance with the approved plat. Upon such certification the governing body shall authorize release by the bonding company or lending institution of an amount as estimated by the municipal engineer fairly representing the value of the improvements completed or, if the governing body fails to act within said **[forty-five-day]** ***45-day*** period, the governing body shall be deemed to have approved the release of funds as requested. The governing body may, prior to final release at the time of completion and certification by its engineer, require retention of **[ten percent]** ***10%*** of the estimated cost of the aforesaid improvements.

(k) Where the governing body accepts dedication of all or some of the required improvements following completion, the governing body may require the posting of financial security to secure structural integrity of said improvements as well as the functioning of said improvements in accordance with the design and specifications as depicted on the final plat for a term not to exceed **[eighteen]** ***18*** months from the date of acceptance of dedication. Said financial security shall be of the same type as otherwise required in this section with regard to installation of such improvements, and the amount of the financial security shall not exceed **[fifteen percent]** ***15%*** of the actual cost of installation of said improvements.

(l) If water mains or sanitary sewer lines, or both, along with apparatus or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the municipality, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required by this section.

(m) If financial security has been provided in lieu of the completion of improvements required as a condition for the final approval of a plat as set forth in this section, the municipality shall not condition the issuance of building, grading or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as depicted upon the final plat upon actual completion of the improvements depicted upon the approved final plat. Moreover, if said financial security has been provided, occupancy permits for any building or buildings to be erected shall not be withheld following: the improvement of the streets providing access to and from existing public roads to such building or buildings to a mud-free or otherwise permanently passable condition, as well as the completion of all other improvements as depicted upon the approved plat, either upon the lot or lots or beyond the lot or lots in question if such improvements are necessary for the reasonable use of or occupancy of the building or buildings. Any ordinance or statute inconsistent herewith is hereby expressly repealed.

Section 38. Section 510 of the act, amended June 1, 1972 (P.L.333, No.93), is reenacted and amended to read:

Section 510. Release from Improvement Bond.—(a) When the developer has completed all of the necessary and appropriate improvements, the developer shall notify the municipal governing body, in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the municipal engineer. The municipal governing body shall, within ten days after receipt of such notice, direct and authorize the municipal engineer to inspect all of the aforesaid improvements. The municipal engineer shall, thereupon, file a report, in writing, with the municipal governing body, and shall promptly mail a copy of the same to the developer by certified or registered mail. The report shall be made and mailed within **[thirty]** ***30*** days after receipt by the municipal engineer of the aforesaid authorization from the governing body; said report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the municipal engineer, said report shall contain a statement of reasons for such nonapproval or rejection.

(b) The municipal governing body shall notify the developer, ***within 15 days of receipt of the engineer's report,*** in writing by certified or registered mail of the action of said municipal governing body with relation thereto.

(c) If the municipal governing body or the municipal engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the developer shall be released from all liability, pursuant to its performance guaranty bond or other security agreement.

(d) If any portion of the said improvements shall not be approved or shall be rejected by the municipal governing body, the developer shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.

(e) Nothing herein, however, shall be construed in limitation of the developer's right to contest or question by legal proceedings or otherwise,

any determination of the municipal governing body or the municipal engineer.

(f) Where herein reference is made to the municipal engineer, he shall be a duly registered professional engineer employed by the municipality or engaged as a consultant thereto.

(g) The municipality may prescribe that the applicant shall reimburse the municipality for the reasonable and necessary expense incurred for the inspection of improvements. Such reimbursement shall be based upon a schedule established by ordinance or resolution. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the municipal engineer or consultant for work performed for similar services in the community, but in no event shall the fees exceed the rate or cost charged by the engineer or consultant to the municipalities when fees are not reimbursed or otherwise imposed on applicants.

(1) In the event the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, within ten working days of the date of billing, notify the municipality that such expenses are disputed as unreasonable or unnecessary, in which case the municipality shall not delay or disapprove a subdivision or land development application or any approval or permit related to development due to the applicant's request over disputed engineer expenses.

(2) If, within 20 days from the date of billing, the municipality and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant and municipality shall jointly, by mutual agreement, appoint another professional engineer licensed as such in the Commonwealth of Pennsylvania to review the said expenses and make a determination as to the amount thereof which is reasonable and necessary.

(3) The professional engineer so appointed shall hear such evidence and review such documentation as the professional engineer in his or her sole opinion deems necessary and render a decision within 50 days of the billing date. The applicant shall be required to pay the entire amount determined in the decision immediately.

(4) In the event that the municipality and applicant cannot agree upon the professional engineer to be appointed within 20 days of the billing date, then, upon application of either party, the President Judge of the Court of Common Pleas of the judicial district in which the municipality is located (or if at the time there be no President Judge, then the senior active judge then sitting) shall appoint such engineer, who, in that case, shall be neither the municipal engineer nor any professional engineer who has been retained by, or performed services for, the municipality or the applicant within the preceding five years.

(5) The fee of the appointed professional engineer for determining the reasonable and necessary expenses shall be paid by the applicant if the amount of payment required in the decision is equal to or greater than the original bill. If the amount of payment required in the decision is less than the original bill by $1,000 or more, the municipality shall pay the fee of the professional engineer, but otherwise the municipality and the applicant shall each pay one-half of the fee of the appointed professional engineer.

Section 39. Section 511 of the act is reenacted to read:

Section 511. Remedies to Effect Completion of Improvements.—In the event that any improvements which may be required have not been installed as provided in the subdivision and land development ordinance or in accord with the approved final plat the governing body of the municipality is hereby granted the power to enforce any corporate bond, or other security by appropriate legal and equitable remedies. If proceeds of such bond, or other security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the governing body of the municipality may, at its option, install part of such improvements in all or part of the subdivision or land development and may institute appropriate legal or equitable action to recover the moneys necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the developer, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other municipal purpose.

Section 40. The act is amended by adding a section to read:

Section 512.1. Modifications.—(a) The governing body or the planning agency, if authorized to approve applications within the subdivision and land development ordinance, may grant a modification of the requirements of one or more provisions if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the ordinance is observed.

(b) All requests for a modification shall be in writing and shall accompany and be a part of the application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the ordinance involved and the minimum modification necessary.

(c) If approval power is reserved by the governing body, the request for modification may be referred to the planning agency for advisory comments.

(d) The governing body or the planning agency, as the case may be, shall keep a written record of all action on all requests for modifications.

Section 41. Section 513 of the act is reenacted and amended to read:

Section 513. Recording **[Plat]** ***Plats and Deeds.***—(a) Upon the approval of a final plat, the developer shall within **[ninety]** ***90*** days of such final approval record such plat in the office of the recorder of deeds of the county in which the municipality is located. Whenever ***such*** plat approval is required by a municipality, the recorder of deeds of the county shall not accept any plat for recording, unless such plat officially notes the approval of the governing body**[.]** ***and review by the county planning agency, if one exists.***

(b) The recording of the plat shall not constitute grounds for assessment increases until such time as lots are sold or improvements are installed on the land included within the subject plat.

Section 42. Section 514 of the act is reenacted to read:

Section 514. Effect of Plat Approval on Official Map.—After a plat has been approved and recorded as provided in this article, all streets and public grounds on such plat shall be, and become a part of the official map of the municipality without public hearing.

Section 43. Section 515 of the act is repealed.

Section 44. The act is amended by adding sections to read:

Section 515.1. Preventive Remedies.—(a) In addition to other remedies, the municipality may institute and maintain appropriate actions by law or in equity to restrain, correct or abate violations, to prevent unlawful construction, to recover damages and to prevent illegal occupancy of a building, structure or premises. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.

(b) A municipality may refuse to issue any permit or grant any approval necessary to further improve or develop any real property which has been developed or which has resulted from a subdivision of real property in violation of any ordinance adopted pursuant to this article. This authority to deny such a permit or approval shall apply to any of the following applicants:

(1) The owner of record at the time of such violation.

(2) The vendee or lessee of the owner of record at the time of such violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.

(3) The current owner of record who acquired the property subsequent to the time of violation without regard as to whether such current owner had actual or constructive knowledge of the violation.

(4) The vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.

As an additional condition for issuance of a permit or the granting of an approval to any such owner, current owner, vendee or lessee for the development of any such real property, the municipality may require compliance with the conditions that would have been applicable to the property at the time the applicant acquired an interest in such real property.

Section 515.2. Jurisdiction.—District justices shall have initial jurisdiction in proceedings brought under section 515.3.

Section 515.3. Enforcement Remedies.—(a) Any person, partnership or corporation who or which has violated the provisions of any subdivision or land development ordinance enacted under this act or prior enabling laws shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than $500 plus all court costs, including reasonable attorney fees incurred by the municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of

civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation.

(b) The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgment pending a final adjudication of the violation and judgment.

(c) Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the municipality the right to commence any action for enforcement pursuant to this section.

Section 45. The heading of Article VI and section 601 of the act are reenacted to read:

ARTICLE VI
Zoning

Section 601. General Powers.—The governing body of each municipality, in accordance with the conditions and procedures set forth in this act, may enact, amend and repeal zoning ordinances to implement comprehensive plans and to accomplish any of the purposes of this act.

Section 46. Section 602 of the act is reenacted and amended to read:

Section 602. County Powers.—The powers of the governing bodies of counties to enact, amend and repeal zoning ordinances shall be limited to land in those **[cities, boroughs, incorporated towns and townships,]** *municipalities,* wholly or partly within the county, which have no zoning ordinance in effect at the time a zoning ordinance is introduced before the governing body of the county and until the **[city, borough, incorporated town or township]** *municipality's* zoning ordinance is in effect. The enactment of a zoning ordinance by any municipality, other than the county, whose land is subject to county zoning shall act as a repeal protanto of the county zoning ordinance within the municipality adopting such ordinance.

Section 47. Section 603 of the act, amended June 9, 1982 (P.L.441, No.130), is reenacted and amended to read:

Section 603. Ordinance Provisions.—(a) *Zoning ordinances should reflect the policy goals of the statement of community development objectives required in section 606, and give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality.*

(b) Zoning ordinances may permit, prohibit, regulate, restrict and determine:

(1) Uses of land, watercourses and other bodies of water**[;]**.

(2) Size, height, bulk, location, erection, construction, repair, maintenance, alteration, razing, removal and use of structures**[;]**.

(3) Areas and dimensions of land and bodies of water to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures**[;]**.

(4) Density of population and intensity of use.

(5) Protection and preservation of natural resources and agricultural land and activities.

[(b) In addition, zoning] ***(c) Zoning*** ordinances may contain:

(1) **[Provisions]** ***provisions*** for special exceptions and variances administered by the zoning hearing board, which provisions shall be in accordance with this act;

(2) **[Provisions]** ***provisions*** for conditional uses to be allowed or denied by the governing body **[after]** ***pursuant to public notice and hearing and*** recommendations by the planning agency**[,]** ***and*** pursuant to express standards and criteria set forth in the ***zoning*** ordinances**[;]**. ***In allowing a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance;***

(2.1) **[When]** ***when*** an application for either a special exception or a conditional use has been filed with either the zoning hearing board or governing body, as relevant, and the subject matter of such application would ultimately constitute either a "land development" as defined in section **[107(11)]** ***107*** or a "subdivision" as defined in section **[107(21)]** ***107***, no change or amendment of the zoning, subdivision or other governing ordinance or plans shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed. Provided, further, should such an application be approved by either the zoning hearing board or governing body, as relevant, applicant shall be entitled to proceed with the submission of either land development or subdivision plans within a period of six months or longer or as may be approved by either the zoning hearing board or the governing body following the date of such approval in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed before either the zoning hearing board or governing body, as relevant. If either a land development or subdivision plan is so filed within said period, such plan shall be subject to the provisions of section 508(1) through (4), and specifically to the time limitations of section 508(4) which shall commence as of the date of filing such land development or subdivision plan;

(2.2) provisions for regulating transferable development rights, on a voluntary basis, including provisions for the protection of persons acquiring the same, in accordance with express standards and criteria set forth in the ordinance and section 619.1;

(3) **[Provisions]** ***provisions*** for the administration and enforcement of such ordinances;

(4) **[Such]** *such* other provisions as may be necessary to implement the purposes of this act; **[and]**

(5) **[Provisions for the protection and preservation of natural resources and agricultural land and activities.]** *provisions to encourage innovation and to promote flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act; and*

(6) provisions authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance.

(d) Zoning ordinances may include provisions regulating the siting, density and design of residential, commercial, industrial and other developments in order to assure the availability of reliable, safe and adequate water supplies to support the intended land uses within the capacity of available water resources.

(e) Zoning ordinances may not unduly restrict the display of religious symbols on property being used for religious purposes.

Section 48. The act is amended by adding a section to read:

Section 603.1. Interpretation of Ordinance Provisions.—In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

Section 49. Section 604 of the act, amended November 26, 1978 (P.L.1209, No.284), is reenacted and amended to read:

Section 604. Zoning Purposes.—The provisions of zoning ordinances shall be designed:

(1) To promote, protect and facilitate **[one or more]** *any or all* of the following: the public health, safety, morals, *and the* general welfare**[,]***;* coordinated and practical community development**[,]** *and* proper density of population**[, civil defense, disaster evacuation]***; emergency management preparedness and operations*, airports, and national defense facilities, the provisions of adequate light and air, *access to incident solar energy,* police protection, vehicle parking and loading space, transportation, water, sewerage, schools, *recreational facilities,* public grounds, *the provision of a safe, reliable and adequate water supply for domestic, commercial, agricultural or industrial use,* and other public requirements**[,]***;* as well as *preservation of the natural, scenic and historic values in the environment and preservation of forests, wetlands, aquifers and floodplains.*

(2) To prevent one or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers. **[Zoning ordinances shall be made in accordance with an overall program, and with consideration for the character of the municipality, its various parts and the suitability of the various parts for particular uses and structures.]**

(3) To preserve prime agriculture and farmland considering topography, soil type and classification, and present use.

(4) To provide for the use of land within the municipality for residential housing of various dwelling types encompassing all basic forms of housing, including single-family and two-family dwellings, and a reasonable range of multifamily dwellings in various arrangements, mobile homes and mobile home parks, provided, however, that no zoning ordinance shall be deemed invalid for the failure to provide for any other specific dwelling type.

(5) To accommodate reasonable overall community growth, including population and employment growth, and opportunities for development of a variety of residential dwelling types and nonresidential uses.

Section 50. Section 605 of the act, amended June 1, 1972 (P.L.333, No.93) and October 5, 1978 (P.L.1067, No.249), is reenacted and amended to read:

Section 605. Classifications.—In any municipality, other than a county, which enacts a zoning ordinance, no part of such municipality shall be left unzoned. The provisions of all zoning ordinances may be classified so that different provisions may be applied to different classes of situations, uses and structures and to such various districts of the municipality as shall be described by a map made part of the zoning ordinance. Where zoning districts are created, all provisions shall be uniform for each class of uses or structures, within each district, except that additional classifications may be made within any district:

(1) For the purpose of making transitional provisions at and near the boundaries of districts**[, and]**.

(1.1) For the purpose of regulating nonconforming uses and structures**[, and]**.

(2) For the regulation, restriction or prohibition of uses and structures at, ***along*** or near*:*

(i) major thoroughfares, their intersections and interchanges, **[and]** transportation arteries ***and rail or transit terminals*****[,]***;*

(ii) natural or artificial bodies of water, ***boat docks and related facilities;***

(iii) places of relatively steep slope or grade, or other areas of hazardous geological or topographic features**[,]***;*

(iv) public buildings and public grounds**[,]***;*

(v) aircraft, helicopter, rocket, and spacecraft facilities**[,]***;*

(vi) places having unique historical, ***architectural*** or patriotic interest or value**[,]*** ***or***

(vii) flood plain areas, ***agricultural areas, sanitary landfills,*** and other places having a special character or use affecting and affected by their surroundings.

As among several classes of zoning districts, the provisions for permitted uses may be mutually exclusive, in whole or in part.

(3) For the purpose of encouraging innovation and the promotion of flexibility, economy and ingenuity in development, including subdivisions

and land developments as defined in this act, and for the purpose of authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance.

(4) For the purpose of regulating transferable development rights on a voluntary basis.

Section 51. Section 606 of the act, amended June 1, 1972 (P.L.333, No.93), is reenacted and amended to read:

Section 606. Statement of Community Development Objectives.—**[Each zoning ordinance enacted after the effective date of this act shall contain a statement of community development objectives.]** *Zoning ordinances enacted after the effective date of this act should reflect the policy goals of the municipality as listed in a statement of community development objectives, recognizing that circumstances can necessitate the adoption and timely pursuit of new goals and the enactment of new zoning ordinances which may neither require nor allow for the completion of a new comprehensive plan and approval of new community development objectives.* This statement may be supplied by reference to the community comprehensive plan or such portions of the community comprehensive plan as may exist and be applicable or **[to]** *may be the statement of community development objectives provided in* a statement of legislative findings of the governing body of the **[political subdivision, having a bearing on the community comprehensive plan,]** *municipality* with respect to land use**[,]***;* density of population**[, and]***; the need for housing, commerce and industry; the* location and function of streets and other community facilities and utilities**[, together with]***; the need for preserving agricultural land and protecting natural resources; and* any other factors that the municipality believes relevant in describing the purposes and intent of **[such]** *the zoning* ordinance. **[With respect to zoning ordinances enacted prior to the effective date of this act, a statement of community development objectives shall be supplied by amendment to the zoning ordinance within three years from the effective date of this act.]**

Section 52. Section 607 of the act is reenacted and amended to read:

Section 607. Preparation of Proposed Zoning Ordinance.—**[The planning agency of each municipality shall prepare the text and map of the proposed zoning ordinance as well as make all necessary studies and surveys preliminary thereto, whenever instructed to do so by the governing body.]** *(a) The text and map of the proposed zoning ordinance, as well as all necessary studies and surveys preliminary thereto, shall be prepared by the planning agency of each municipality upon request by the governing body.*

(b) In preparing a proposed zoning ordinance, the planning agency shall hold at least one public **[hearing]** *meeting* pursuant to public notice and may hold additional public **[hearings]** *meetings* upon such notice as it shall determine to be advisable.

(c) Upon the completion of its work, the planning agency shall present to the governing body the proposed zoning ordinance, together with recommendations and explanatory materials.

(d) The procedure set forth in this section shall be a condition precedent to the validity of a zoning ordinance adopted pursuant to this act.

(e) If a county planning agency shall have been created for the county in which the **[city, borough, incorporated town or township]** ***municipality*** adopting the ordinance is located, then at least **[thirty]** ***45*** days prior to the **[submission of the ordinance to]** ***public hearing by*** the local governing body ***as provided in section 608***, the **[city, borough, incorporated town or township planning agency]** ***municipality*** shall submit the proposed ordinance to said county planning agency for recommendations.

Section 53. Sections 608, 609 and 609.1 of the act, amended or added June 1, 1972 (P.L.333, No.93), are reenacted and amended to read:

Section 608. Enactment of Zoning Ordinance.—Before voting on the enactment of a zoning ordinance, the governing body shall hold a public hearing thereon, pursuant to public notice. The vote on the enactment by the governing body shall be within **[ninety]** ***90*** days after the ***last*** public hearing. ***Within 30 days after enactment, a copy of the zoning ordinance shall be forwarded to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.***

Section 609. Enactment of Zoning Ordinance Amendments.—*(a)* For the preparation of amendments to zoning ordinances, the procedure set forth in **[this article]** ***section 607*** for the preparation of a proposed zoning ordinance shall be **[permissive.]** ***optional.***

(b) Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, pursuant to public notice. ***In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the municipality at points deemed sufficient by the municipality along the perimeter of the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one week prior to the date of the hearing.***

(c) In the case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency at least **[thirty]** ***30*** days prior to the hearing on such proposed amendment to provide the planning agency an opportunity to submit recommendations.

(d) If, after any public hearing held upon an amendment, the proposed amendment is **[revised, or further revised]** ***changed substantially, or is revised***, to include land previously not affected by it, the governing body shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.

(e) If a county planning agency shall have been created for the county in which the **[city, borough, incorporated town or township adopting the ordinance]** ***municipality proposing the amendment*** is located, then at least **[thirty]** ***30*** days prior to the ***public*** hearing on the **[ordinance]** ***amendment*** by the local governing body, the **[city, borough, incorporated town or township planning agency]** ***municipality*** shall submit the proposed **[ordinance]** ***amendment*** to the county planning agency for recommendations.

(f) The municipality may offer a mediation option as an aid in completing proceedings authorized by this section. In exercising such an option, the municipality and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX.

(g) Within 30 days after enactment, a copy of the amendment to the zoning ordinance shall be forwarded to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

Section 609.1. Procedure **[Upon]** *for Landowner* Curative Amendments.—*(a)* A landowner who desires to challenge on substantive grounds the validity of **[an]** *a zoning* ordinance or map or any provision thereof, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the governing body with a written request that his challenge and proposed amendment be heard and decided as provided in section **[1004]** *916.1*. The governing body shall commence a hearing thereon within **[sixty]** *60* days of the request as provided in section **[1004]** *916.1*. The curative amendment *and challenge* shall be referred to the planning agency or agencies as provided in section 609 and notice of the hearing thereon shall be given as provided in section 610 and in section **[1004]** *916.1*.

(b) The hearing shall be conducted in accordance with **[subsections (4) to (8) of]** section 908 and all references therein to the zoning hearing board shall, for purposes of this section be references to the governing body. *If a municipality does not accept a landowner's curative amendment brought in accordance with this subsection and a court subsequently rules that the challenge has merit, the court's decision shall not result in a declaration of invalidity for the entire zoning ordinance and map, but only for those provisions which specifically relate to the landowner's curative amendment and challenge.*

(c) The governing body of a municipality which has determined that a validity challenge has merit may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the challenged defects. The governing body shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:

(1) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;

(2) if the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or map;

(3) the suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features;

(4) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the

degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and

(5) the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

Section 54. Section 609.2 of the act, added October 5, 1978 (P.L.1067, No.249), is reenacted and amended to read:

Section 609.2. Procedure **[Upon]** *for* Municipal Curative Amendments.—*If a municipality determines that its zoning ordinance or any portion thereof is substantially invalid, it shall take the following actions:*

(1) A municipality**[, by formal action, may]** *shall* declare *by formal action,* its zoning ordinance or portions thereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within **[thirty]** *30* days following such declaration and proposal the governing body of the municipality shall:

[(a)] *(i)* By resolution make specific findings setting forth the declared invalidity of the zoning ordinance which may include:

[(i)] *(A)* references to specific uses which are either not permitted or not permitted in sufficient quantity**[,]***;*

[(ii)] *(B)* reference to a class of use or uses which require revision**[,]***;* or

[(iii)] *(C)* reference to the entire ordinance which requires revisions.

[(b)] *(ii)* Begin to prepare and consider a curative amendment to the zoning ordinance to correct the declared invalidity.

(2) Within **[one hundred eighty]** *180* days from the date of the declaration and proposal, the municipality shall enact a curative amendment to *validate*, or reaffirm the validity of, its zoning ordinance pursuant to the provisions required by section 609**[,]** *in order* to cure the declared invalidity of the zoning ordinance.

(3) Upon the initiation of the procedures, as set forth in **[subsection]** *clause* (1), the governing body shall not be required to entertain or consider any landowner's curative amendment filed under section 609.1 nor shall the **[Zoning Hearing Board]** *zoning hearing board* be required to give a report requested under section **[910 or 913.1]** *909.1 or 916.1* subsequent to the declaration and proposal based upon the grounds identical to or substantially similar to those specified in the resolution required by **[subsection]** *clause* (1)(a). Upon completion of the procedures as set forth in **[subsections]** *clauses* (1) and (2), no rights to a cure pursuant to the provisions of sections 609.1 and **[1004]** *916.1* shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of the unamended zoning ordinance for which there has been a curative amendment pursuant to this section.

(4) A municipality having utilized the procedures as set forth in **[subsections]** *clauses* (1) and (2) may not again utilize said procedure for a **[thirty-six-month]** *36-month* period following the date of the enactment of a curative amendment, or reaffirmation of the validity of its zoning ordinance, pursuant to **[subsection]** *clause* (2); provided, however, if after the

date of declaration and proposal there is a substantially new duty or obligation imposed upon the municipality by virtue of a change in statute or by virtue of a Pennsylvania Appellate Court decision, the municipality may utilize the provisions of this section to prepare a curative amendment to its ordinance to fulfill said duty or obligation.

Section 55. Section 610 of the act is reenacted and amended to read:

Section 610. **[Content of Public Notice.—Public notices of proposed zoning ordinances and amendments shall include either the full text thereof, or a brief summary setting forth the principal provisions in reasonable detail, and a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined, in addition to the time and place of hearing.]** ***Publication, Advertisement and Availability of Ordinances.—(a) Proposed zoning ordinances and amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost thereof. The governing body shall publish the proposed ordinance or amendment once in one newspaper of general circulation in the municipality not more than 60 days nor less than 7 days prior to passage. Publication of the proposed ordinance or amendment shall include either the full text thereof or the title and a brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:***

(1) A copy thereof shall be supplied to a newspaper of general circulation in the municipality at the time the public notice is published.

(2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances.

(b) In the event substantial amendments are made in the proposed ordinance or amendment, before voting upon enactment, the governing body shall, at least ten days prior to enactment, readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

(c) Zoning ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

Section 56. Section 611 of the act is repealed.

Section 57. Sections 613 and 614 of the act, amended June 1, 1972 (P.L.333, No.93), are reenacted and amended to read:

Section 613. Registration of Nonconforming Uses, *Structures and Lots*.—Zoning ordinances **[shall]** *may* contain provisions requiring the zoning officer to identify and register nonconforming uses, **[and nonconforming]** structures *and lots, together with the reasons why the zoning officer identified them as nonconformities*.

Section 614. Appointment and Powers of Zoning Officer.—For the administration of a zoning ordinance, a zoning officer, who **[may]** ***shall*** not hold any elective office in the municipality, shall be appointed. ***The zoning officer shall meet qualifications established by the municipality and shall be able to demonstrate to the satisfaction of the municipality a working knowledge of municipal zoning.*** The zoning officer shall administer the zoning ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to the zoning ordinance. ***Zoning officers may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of their employment.***

Section 58. Section 615 of the act is reenacted to read:

Section 615. Zoning Appeals.—All appeals from decisions of the zoning officer shall be taken in the manner set forth in this act.

Section 59. Section 616 of the act is repealed.

Section 60. The act is amended by adding a section to read:

Section 616.1. Enforcement Notice.—(a) If it appears to the municipality that a violation of any zoning ordinance enacted under this act or prior enabling laws has occurred, the municipality shall initiate enforcement proceedings by sending an enforcement notice as provided in this section.

(b) The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.

(c) An enforcement notice shall state at least the following:

(1) The name of the owner of record and any other person against whom the municipality intends to take action.

(2) The location of the property in violation.

(3) The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the ordinance.

(4) The date before which the steps for compliance must be commenced and the date before which the steps must be completed.

(5) That the recipient of the notice has the right to appeal to the zoning hearing board within a prescribed period of time in accordance with procedures set forth in the ordinance.

(6) That failure to comply with the notice within the time specified, unless extended by appeal to the zoning hearing board, constitutes a violation, with possible sanctions clearly described.

Section 61. Section 617 of the act is reenacted and amended to read:

Section 617. **[Enforcement Remedies]** ***Causes of Action.***—In case any building, structure, ***landscaping*** or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of any ordinance enacted under this act or prior enabling laws, the governing body or, with the approval of the governing body, an officer of the municipality, ***or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation,*** in

addition to other remedies, may institute **[in the name of the municipality]** any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, *landscaping* or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. *When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the municipality at least 30 days prior to the time the action is begun by serving a copy of the complaint on the governing body of the municipality. No such action may be maintained until such notice has been given.*

Section 62. The act is amended by adding sections to read:

Section 617.1. Jurisdiction.—District justices shall have initial jurisdiction over proceedings brought under section 617.2.

Section 617.2. Enforcement Remedies.—(a) Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of any zoning ordinance enacted under this act or prior enabling laws shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than $500 plus all court costs, including reasonable attorney fees incurred by a municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of zoning ordinances shall be paid over to the municipality whose ordinance has been violated.

(b) The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.

(c) Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the municipality the right to commence any action for enforcement pursuant to this section.

Section 617.3. Finances and Expenditures.—(a) The governing body may appropriate funds to finance the preparation of zoning ordinances and shall appropriate funds for administration, for enforcement and for actions to support or oppose, upon appeal to the courts, decisions of the zoning hearing board.

(b) The governing body shall make provision in its budget and appropriate funds for the operation of the zoning hearing board.

(c) The zoning hearing board may employ or contract for and fix the compensation of legal counsel, as the need arises. The legal counsel shall be an attorney other than the municipal solicitor. The board may also employ or contract for and fix the compensation of experts and other staff and may contract for services as it shall deem necessary. The compensation of legal counsel, experts and staff and the sums expended for services shall not exceed the amount appropriated by the governing body for this use.

(d) For the same purposes, the governing body may accept gifts and grants of money and services from private sources and from the county, State and Federal Governments.

(e) The governing body may prescribe reasonable fees with respect to the administration of a zoning ordinance and with respect to hearings before the zoning hearing board. Fees for these hearings may include compensation for the secretary and members of the zoning hearing board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the zoning hearing board, expenses for engineering, architectural or other technical consultants or expert witness costs.

Section 63. Section 618 of the act is repealed.

Section 64. Section 619 of the act is reenacted and amended to read:

Section 619. Exemptions.—This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. *It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.*

Section 65. The act is amended by adding a section to read:

Section 619.1. Transferable Development Rights.—(a) To and only to the extent a local ordinance enacted in accordance with this article and Article VII so provides, there is hereby created, as a separate estate in land, the development rights therein, and the same are declared to be severable and separately conveyable from the estate in fee simple to which they are applicable.

(b) The development rights shall be conveyed by a deed duly recorded in the office of the recorder of deeds in and for the county in which the municipality whose ordinance authorizes such conveyance is located.

(c) The recorder of deeds shall not accept for recording any such instrument of conveyance unless there is endorsed thereon the approval of the municipal governing body having zoning or planned residential development jurisdiction over the land within which the development rights are to be conveyed, dated not more than 60 days prior to the recording.

(d) No development rights shall be transferable beyond the boundaries of the municipality wherein the lands from which the development rights arise are situated.

Section 66. The heading of Article VII is reenacted to read:

ARTICLE VII
Planned Residential Development

Section 67. Sections 701 and 702 of the act are reenacted and amended to read:

Section 701. Purposes.—In order that the purposes of this act be furthered in an era of increasing urbanization and of growing demand for housing of all types and design; to insure that the provisions of Article VI which are concerned in part with the uniform treatment of dwelling type, bulk, density, ***intensity*** and open space within each zoning district, shall not be applied to the improvement of land by other than lot by lot development in a manner that would distort the objectives of that Article VI; to encourage innovations in residential ***and nonresidential*** development and renewal so that the growing demand for housing ***and other development*** may be met by greater variety in type, design and layout of dwellings ***and other buildings and structures*** and by the conservation and more efficient use of open space ancillary to said dwellings ***and uses***; so that greater opportunities for better housing and recreation may extend to all citizens and residents of this **[State]** ***Commonwealth***; and in order to encourage a more efficient use of land and of public services and to reflect changes in the technology of land development so that economies secured may enure to the benefit of those who need homes ***and for other uses***; and, in aid of these purposes, to provide a procedure which can relate the type, design and layout of residential ***and nonresidential*** development to the particular site and the particular demand for housing existing at the time of development in a manner consistent with the preservation of the property values within existing residential ***and nonresidential*** areas, and to insure that the increased flexibility of regulations over land development authorized herein is carried out under such administrative standards and procedures as shall encourage the disposition of proposals for land development without undue delay, the following powers are granted to all municipalities.

Section 702. Grant of Power.—The governing body of each municipality may enact, amend and repeal **[ordinances]** ***provisions within a zoning ordinance*** fixing standards and conditions for planned residential development. The enactment of such **[ordinances]** ***provisions*** shall be in accordance with the procedures required for the enactment of an amendment of a zoning ordinance as provided in Article VI of this act. Pursuant to such **[ordinances]** ***provisions*** the governing body may approve, modify or disapprove any development plan within the municipality adopting such **[ordinances]** ***provisions*** or designate the planning agency**[, or any other committee, commission or office]** as its official agency for such purposes. Such **[ordinances]** ***provisions*** shall:

(1) Specify **[the]** ***whether the governing*** body, ***or the planning*** agency **[or office within the municipality which]** shall administer planned residential development **[ordinances]** ***provisions*** pursuant to the provisions of this article;

(2) Set forth the standards, conditions and regulations for a planned residential development consistent with the provisions of this article; and

(3) Set forth the procedures pertaining to the application for, hearing on and tentative and final approval of a planned residential development, which shall be consistent with the provisions of this article for such applications and hearings.

Section 68. The act is amended by adding a section to read:

Section 702.1. Transferable Development Rights.—Municipalities electing to enact planned residential development provisions may also incorporate therein provisions for transferable development rights, on a voluntary basis, in accordance with express standards and criteria set forth in the ordinance and with the requirements of Article VI.

Section 69. Sections 703 and 704 of the act are reenacted and amended to read:

Section 703. **[Application]** ***Applicability of Comprehensive Plan and Statement of Community Development Objectives.***—**[Every ordinance]** ***All provisions*** and all amendments thereto adopted pursuant to this article shall be based on and interpreted in relation to the ***statement of community development objectives of the zoning ordinance and may be related to either the*** comprehensive plan for the development of the municipality prepared under the provisions of this act ***or a statement of legislative findings in accordance with section 606.*** Every application for approval of a planned residential development ***either*** shall be based on and interpreted in relation to **[such comprehensive plan.]** ***the statement of community development objectives, and may be related to the comprehensive plan, or shall be based on and interpreted in relation to the statement of legislative findings.***

Section 704. Jurisdiction of County Planning Agencies.—***(a)*** When any county has adopted **[a]** planned residential development **[ordinance]** ***provisions*** in accordance with the terms of this article, a certified copy of **[the ordinance]** ***such provisions*** shall be sent to every **[city, borough, incorporated town or township]** ***municipality*** within the county. All amendments shall also be sent to the aforementioned municipalities.

(b) The powers of governing bodies of counties to enact, amend and repeal planned residential development **[ordinances]** ***provisions*** shall not supersede any local planned residential development, zoning or subdivision and land development ordinance which is already in effect or subsequently becomes effective in any **[city, borough, incorporated town or township]** ***municipality*** within such county, provided that a certified copy of **[each]** such **[ordinance]** ***provision*** is filed with the county planning agency, if one exists. However, all applications for tentative approval of planned residential development of land located within a **[city, borough, incorporated town or township]** ***municipality*** having adopted **[a]** planned residential development **[ordinance]** ***provisions*** as set forth in this article shall nevertheless be

referred to the county planning agency, if one exists, for study and recommendation and such county planning agency shall be required to report to such municipality within **[thirty]** ***30*** days or forfeit the right to review. **[Further, any city, borough, incorporated town or township may designate the county planning agency as its official agency for review and approval of planned residential development applications.]**

Section 70. Section 705 of the act, amended June 23, 1982 (P.L.613, No.173), is reenacted and amended to read:

Section 705. Standards and Conditions for Planned Residential Development.—**[Every ordinance]** ***(a) All provisions*** adopted pursuant to **[the provisions of]** this article shall set forth all the standards, conditions and regulations by which a proposed planned residential development shall be evaluated, and said standards, conditions and regulations shall be consistent with the following **[provisions:]** ***subsections.***

[(a)] ***(b)*** The **[ordinance]** ***provisions*** adopted pursuant to this article shall set forth the uses permitted in a planned residential development, which uses may include **[and]** ***but*** shall ***not*** be limited to:

(1) Dwelling units **[in detached, semi-detached, attached or multi-storied structures]** ***of any dwelling type or configuration***, or any combination thereof**[; and].**

(2) **[those]** ***Those*** nonresidential uses deemed to be appropriate for incorporation in the design of the planned residential development.

(c) The **[ordinance]** ***provisions*** may establish regulations setting forth the timing of development among the various types of dwellings and may specify whether some or all nonresidential uses are to be built before, after or at the same time as the residential uses.

[(b)] ***(d)*** The **[ordinance]** ***provisions*** adopted pursuant to this article shall establish standards governing the density, or intensity of land use, in a planned residential development. The standards may vary the density or intensity of land use, otherwise applicable to the land under the provisions of a zoning ordinance of the municipality within the planned residential development in consideration of ***all of the following:***

(1) The amount, location and proposed use of common open space**[;].**

(2) The location and physical characteristics of the site of the proposed planned residential development**[; and].**

(3) The location, design, type and use of structures proposed.

[(c)] ***(e)*** In the case of a planned residential development proposed to be developed over a period of years, standards established in **[an ordinance]** ***provisions*** adopted pursuant to this article may, to encourage the flexibility of housing density, design and type intended by this article**[, permit]:**

(1) Permit a variation in each section to be developed from the density, or intensity of use, established for the entire planned residential development. **[The ordinance may include provisions to allow]**

(2) Allow for a greater concentration of density**[, of]** ***or*** intensity of land use, within some section or sections of development, whether it be earlier or later in the development than upon others. **[The ordinance may require]**

(3) ***Require*** that the approval of such greater concentration of density ***or intensity*** of land use for any section to be developed be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of common open space on the remaining land by a grant of easement or by covenant in favor of the municipality, provided that such reservation shall, as far as practicable, defer the precise location of such common open space until an application for final approval is filed, so that flexibility of development which is a prime objective of this article, can be maintained.

[(d)] *(f)* The standards for a planned residential development established by **[an ordinance]** ***provisions*** adopted pursuant to this article may require that the common open space resulting from the application of standards for density, or intensity of land use, shall be set aside for the use and benefit of the residents in such development and may include provisions which shall determine the amount and location of said common open space and secure its improvement and maintenance for common open space use, subject, however, to the following:

(1) The municipality may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but the municipality need not require, as a condition of the approval of a planned residential development, that land proposed to be set aside for common open space be dedicated or made available to public use. The **[ordinance]** ***provisions*** may require that the landowner provide for and establish an organization for the ownership and maintenance of the common open space, and that such organization shall not be dissolved nor shall it dispose of the common open space, by sale or otherwise (except to an organization conceived and established to own and maintain the common open space), without first offering to dedicate the same to the public.

(2) In the event that the organization established to own and maintain common open space, or any successor organization, shall at any time after establishment of the planned residential development fail to maintain the common open space in reasonable order and condition in accordance with the development plan, the municipality may serve written notice upon such organization or upon the residents of the planned residential development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be corrected within **[thirty]** ***30*** days thereof, and shall state the date and place of a hearing thereon which shall be held within **[fourteen]** ***14*** days of the notice. At such hearing the municipality may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be corrected.

(3) If the deficiencies set forth in the original notice or in the modifications thereof shall not be corrected within said **[thirty]** ***30*** days or any extension thereof, the municipality, in order to preserve the taxable values of the properties within the planned residential development and to

prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said maintenance by the municipality shall not constitute a taking of said common open space, nor vest in the public any rights to use the same.

(4) Before the expiration of said year, the municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the planned residential development, to be held by the governing body or its designated agency, at which hearing such organization or the residents of the planned residential development shall show cause why such maintenance by the municipality shall not, at the option of the municipality, continue for a succeeding year. If the governing body, or its designated agency, shall determine that such organization is ready and able to maintain said common open space in reasonable condition, the municipality shall cease to maintain said common open space at the end of said year. If the governing body or its designated agency shall determine that such organization is not ready and able to maintain said common open space in a reasonable condition, the municipality may, in its discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.

(5) The decision of the governing body or its designated agency shall be subject to appeal to court in the same manner, and within the same time limitation, as is provided for zoning appeals by this act.

[(3)] *(6)* The cost of such maintenance by the municipality shall be assessed ratably against the properties within the planned residential development that have a right of enjoyment of the common open space, and shall become a lien on said properties. The municipality at the time of entering upon said common open space for the purpose of maintenance shall file a notice of lien in the office of the prothonotary of the county, upon the properties affected by the lien within the planned residential development.

[(e) An ordinance] *(g) Provisions* adopted pursuant to **[the provisions of]** this article may require that a planned residential development contain a minimum number of dwelling units.

[(f)] *(h)* The authority granted a municipality by Article V to establish standards for the location, width, course and surfacing of streets, walkways, curbs, gutters, street lights, shade trees, water, sewage and drainage facilities, easements or rights-of-way for drainage and utilities, reservations of public grounds, other improvements, regulations for the height and setback as they relate to renewable energy systems and energy-conserving building design, regulations for the height and location of vegetation with respect to boundary lines, as they relate to renewable energy systems and energy-conserving building design, regulations for the type and location of renewable energy systems or their components and regulations for the design and construction of structures to encourage the use of renewable energy systems,

shall be vested in the governing body or **[its designated]** ***the planning*** agency for the purposes of this article. The standards applicable to a particular planned residential development may be different than or modifications of, the standards and requirements otherwise required of subdivisions authorized under an ordinance adopted pursuant to Article V, provided, however, that **[an ordinance]** ***provisions*** adopted pursuant to this article shall set forth the limits and extent of any modifications or changes in such standards and requirements in order that a landowner shall know the limits and extent of permissible modifications from the standards otherwise applicable to subdivisions.

[(g)] ***(i)*** **[An ordinance]** ***The provisions*** adopted pursuant to this article shall set forth the standards and criteria by which the design, bulk and location of buildings shall be evaluated, and all such standards and criteria for any feature of a planned residential development shall be set forth in such **[ordinance]** ***provisions*** with sufficient certainty to provide reasonable criteria by which specific proposals for a planned residential development can be evaluated. All standards in such **[ordinance]** ***provisions*** shall not unreasonably restrict the ability of the landowner to relate his development plan to the particular site and to the particular demand for housing existing at the time of development.

(j) Provisions adopted pursuant to this article shall include a requirement that, if water is to be provided by means other than by private wells owned and maintained by the individual owners of lots within the planned residential development, applicants shall present evidence to the governing body or planning agency, as the case may be, that the planned residential development is to be supplied by a certificated public utility, a bona fide cooperative association of lot owners, or by a municipal corporation, authority or utility. A copy of a Certificate of Public Convenience from the Pennsylvania Public Utility Commission or an application for such certificate, a cooperative agreement, or a commitment or agreement to serve the area in question, whichever is appropriate, shall be acceptable evidence.

Section 71. Section 706 of the act is reenacted and amended to read:

Section 706. Enforcement and Modification of Provisions of the Plan.—To further the mutual interest of the residents of the planned residential development and of the public in the preservation of the integrity of the development plan, as finally approved, and to insure that modifications, if any, in the development plan shall not impair the reasonable reliance of the said residents upon the provisions of the development plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the development plan as finally **[improved]** ***approved***, whether those are recorded by plat, covenant, easement or otherwise shall be subject to the following provisions:

(1) The provisions of the development plan relating to*:*

(i) the use, bulk and location of buildings and structures**[,]***;*

(ii) the quantity and location of common open space, except as otherwise provided in this article**[,]***;* and

(iii) the intensity of use or the density of residential units[,]*;*

shall run in favor of the municipality and shall be enforceable in law or in equity by the municipality, without limitation on any powers of regulation otherwise granted the municipality by law.

(2) All provisions of the development plan shall run in favor of the residents of the planned residential development but only to the extent expressly provided in the development plan and in accordance with the terms of the development plan, and to that extent said provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or equity by said residents acting individually, jointly, or through an organization designated in the development plan to act on their behalf; provided, however, that no provisions of the development plan shall be implied to exist in favor of residents of the planned residential development except as to those portions of the development plan which have been finally approved and have been recorded.

(3) All those provisions of the development plan authorized to be enforced by the municipality under this section may be modified, removed, or released by the municipality, except grants or easements relating to the service or equipment of a public utility, subject to the following conditions:

(i) **[no]** *No* such modification, removal or release of the provisions of the development plan by the municipality shall affect the rights of the residents of the planned residential development to maintain and enforce those provisions, at law or equity, as provided in this section**[;].**

(ii) **[no]** *No* modification, removal or release of the provisions of the development plan by the municipality shall be permitted except upon a finding by the governing body or **[its designated]** ***the planning*** agency, following a public hearing thereon pursuant to public notice called and held in accordance with the provisions of this article, that the same is consistent with the efficient development and preservation of the entire planned residential development, does not adversely affect either the enjoyment of land abutting upon or across the street from the planned residential development or the public interest, and is not granted solely to confer a special benefit upon any person.

(4) Residents of the planned residential development may, to the extent and in the manner expressly authorized by the provisions of the development plan, modify, remove or release their rights to enforce the provisions of the development plan but no such action shall affect the right of the municipality to enforce the provisions of the development plan in accordance with the provisions of this section.

Section 72. Section 707 of the act, amended June 23, 1982 (P.L.613, No.173), is reenacted and amended to read:

Section 707. Application for Tentative Approval of Planned Residential Development.—In order to provide an expeditious method for processing a development plan for a planned residential development under the **[terms of an ordinance]** ***provisions*** adopted pursuant to the powers granted herein, and to avoid the delay and uncertainty which would arise if it were necessary to

secure approval, by a multiplicity of local procedures, of a plat of subdivision as well as approval of a change in the zoning regulations otherwise applicable to the property, it is hereby declared to be in the public interest that all procedures with respect to the approval or disapproval of a development plan for a planned residential development and the continuing administration thereof shall be consistent with the following provisions:

(1) An application for tentative approval of the development plan for a planned residential development shall be filed by or on behalf of the landowner**[;]**.

(2) The application for tentative approval shall be filed by the landowner in such form, upon the payment of such a reasonable fee and with such officials of the municipality as shall be designated in the **[ordinance]** ***provisions*** adopted pursuant to this article**[;]**.

(3) All planning, zoning and subdivision matters relating to the platting, use and development of the planned residential development and subsequent modifications of the regulations relating thereto, to the extent such modification is vested in the municipality, shall be determined and established by the governing body or **[its designated]** ***the planning*** agency**[;]**.

(4) The **[ordinance]** ***provisions*** shall require only such information in the application as is reasonably necessary to disclose to the governing body or **[its designated]** ***the planning*** agency:

(i) the location, size and topography of the site and the nature of the landowner's interest in the land proposed to be developed;

(ii) the density of land use to be allocated to parts of the site to be developed;

(iii) the location and size of the common open space and the form of organization proposed to own and maintain the common open space;

(iv) the use and the approximate height, bulk and location of buildings and other structures;

(v) the feasibility of proposals for ***water supply and*** the disposition of sanitary waste and storm water;

(vi) the substance of covenants, grants of easements or other restrictions proposed to be imposed upon the use of the land, buildings and structures including proposed easements or grants for public utilities;

(vii) the provisions for parking of vehicles and the location and width of proposed streets and public ways;

(viii) the required modifications in the municipal land use regulations otherwise applicable to the subject property;

(viii.1) the feasibility of proposals for energy conservation and the effective utilization of renewable energy sources; and

(ix) in the case of development plans which call for development over a period of years, a schedule showing the proposed times within which applications for final approval of all sections of the planned residential development are intended to be filed and this schedule must be updated annually, on the anniversary of its approval, until the development is completed and accepted**[;]**.

(5) The application for tentative approval of a planned residential development shall include a written statement by the landowner setting forth the reasons why, in his opinion, a planned residential development would be in the public interest and would be consistent with the comprehensive plan for the development of the municipality**[; and]**.

(6) The application for and tentative and final approval of a development plan for a planned residential development prescribed in this article shall be in lieu of all other procedures or approvals, otherwise required pursuant to Articles V and VI of this act.

Section 73. Section 708 of the act is reenacted and amended to read:

Section 708. Public Hearings.—(a) Within **[sixty]** ***60*** days after the filing of an application for tentative approval of a planned residential development pursuant to this article, a public hearing pursuant to public notice on said application shall be held by the governing body ***or the planning agency, if designated,*** in the manner prescribed in Article **[VI for the enactment of an amendment to a zoning ordinance. The chairman, or, in his absence, the acting chairman, of the governing body or its designated agency may administer oaths and compel the attendance of witnesses. All testimony by witnesses at any hearing shall be given under oath and every party of record at a hearing shall have the right to cross-examine adverse witnesses.**

(b) A verbatim record of the hearing shall be caused to be made by the governing body whenever such records are requested by any party to the proceedings; but the cost of making and transcribing such a record shall be borne by the party requesting it and the expense of copies of such record shall be borne by those who wish to obtain such copies. All exhibits accepted in evidence shall be identified and duly preserved or, if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record] ***IX.***

[(c)] ***(b)*** The governing body ***or the planning agency*** may continue the hearing from time to time, and ***where applicable,*** may refer the matter back to the planning agency for a report, provided, however, that in any event, the public hearing or hearings shall be concluded within **[sixty]** ***60*** days after the date of the first public hearing.

(c) The municipality may offer a mediation option as an aid in completing proceedings authorized by this section and by subsequent sections in this article prior to final approval by the governing body. In exercising such an option, the municipality and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX.

Section 74. Section 709 of the act, amended October 5, 1978 (P.L.1067, No.249), is reenacted and amended to read:

Section 709. The Findings.—(a) The governing body, ***or the planning agency,*** within **[sixty]** ***60*** days following the conclusion of the public hearing provided for in this article, shall, by official written communication, to the landowner, either:

(1) **[Grant]** ***grant*** tentative approval of the development plan as submitted;

(2) **[Grant]** ***grant*** tentative approval subject to specified conditions not included in the development plan as submitted; or

(3) **[Deny]** ***deny*** tentative approval to the development plan.

Failure to so act within said period shall be deemed to be a grant of tentative approval of the development plan as submitted. In the event, however, that tentative approval is granted subject to conditions, the landowner may, within **[thirty]** ***30*** days after receiving a copy of the official written communication of the governing body notify such governing body of his refusal to accept all said conditions, in which case, the governing body shall be deemed to have denied tentative approval of the development plan. In the event the landowner does not, within said period, notify the governing body of his refusal to accept all said conditions, tentative approval of the development plan, with all said conditions, shall stand as granted.

(b) The grant or denial of tentative approval by official written communication shall include not only conclusions but also findings of fact related to the specific proposal and shall set forth the reasons for the grant, with or without conditions, or for the denial, and said communication shall set forth with particularity in what respects the development plan would or would not be in the public interest, including, but not limited to, findings of fact and conclusions on the following:

(1) **[In]** ***in*** those respects in which the development plan is or is not consistent with the comprehensive plan for the development of the municipality;

(2) **[The]** ***the*** extent to which the development plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest;

(3) **[The]** ***the*** purpose, location and amount of the common open space in the planned residential development, the reliability of the proposals for maintenance and conservation of the common open space, and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of residential development;

(4) **[The]** ***the*** physical design of the development plan and the manner in which said design does or does not make adequate provision for public services, provide adequate control over vehicular traffic, and further the amenities of light and air, recreation and visual enjoyment;

(5) **[The]** ***the*** relationship, beneficial or adverse, of the proposed planned residential development to the neighborhood in which it is proposed to be established; and

(6) **[In]** ***in*** the case of a development plan which proposes development over a period of years, the sufficiency of the terms and conditions intended to protect the interests of the public and of the residents of the planned residential development in the integrity of the development plan.

(c) In the event a development plan is granted tentative approval, with or without conditions, the governing body may set forth in the official written

communication the time within which an application for final approval of the development plan shall be filed or, in the case of a development plan which provides for development over a period of years, the periods of time within which applications for final approval of each part thereof shall be filed. Except upon the consent of the landowner, the time so established between grant of tentative approval and an application for final approval shall not be less than three months and, in the case of developments over a period of years, the time between applications for final approval of each part of a plan shall be not less than **[twelve]** ***12*** months.

Section 75. Section 710 of the act is reenacted and amended to read:

Section 710. Status of Plan After Tentative Approval.—(a) The official written communication provided for in this article shall be certified by the ***municipal*** secretary or clerk of the governing body and shall be filed in his office, and a certified copy shall be mailed to the landowner. Where tentative approval has been granted, **[the same]** ***it shall be deemed an amendment to the zoning map, effective upon final approval, and*** shall be noted on the zoning map.

(b) Tentative approval of a development plan shall not qualify a plat of the planned residential development for recording nor authorize development or the issuance of any building permits. A development plan which has been given tentative approval as submitted, or which has been given tentative approval with conditions which have been accepted by the landowner (and provided that the landowner has not defaulted nor violated any of the conditions of the tentative approval), shall not be modified or revoked nor otherwise impaired by action of the municipality pending an application or applications for final approval, without the consent of the landowner, provided an application ***or applications*** for final approval is filed or, in the case of development over a period of years, provided applications are filed, within the periods of time specified in the official written communication granting tentative approval.

(c) In the event that a development plan is given tentative approval and thereafter, but prior to final approval, the landowner shall elect to abandon said development plan and shall so notify the governing body in writing, or in the event the landowner shall fail to file application or applications for final approval within the required period of time or times, as the case may be, the tentative approval shall be deemed to be revoked and all that portion of the area included in the development plan for which final approval has not been given shall be subject to those local ordinances otherwise applicable thereto as they may be amended from time to time, and the same shall be noted on the zoning map and in the records of the ***municipal*** secretary or clerk of the municipality.

Section 76. Section 711 of the act, amended October 16, 1981 (P.L.293, No.101), is reenacted and amended to read:

Section 711. Application for Final Approval.—(a) An application for final approval may be for all the land included in a development plan or, to the extent set forth in the tentative approval, for a section thereof. Said application shall be made to the official of the municipality designated by the

ordinance and within the time or times specified by the official written communication granting tentative approval. The application shall include any drawings, specifications, covenants, easements, performance bond and such other requirements as may be specified by ordinance, as well as any conditions set forth in the official written communication at the time of tentative approval. A public hearing on an application for final approval of the development plan, or part thereof, shall not be required provided the development plan, or the part thereof, submitted for final approval, is in compliance with the development plan theretofore given tentative approval and with any specified conditions attached thereto.

(b) In the event the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof, and as required by the ordinance and the official written communication of tentative approval, the municipality shall, within **[forty-five]** ***45*** days of such filing, grant such development plan final approval.

(c) In the event the development plan as submitted contains variations from the development plan given tentative approval, the **[governing]** ***approving*** body may refuse to grant final approval and shall, within **[forty-five]** ***45*** days from the filing of the application for final approval, so advise the landowner in writing of said refusal, setting forth in said notice the reasons why one or more of said variations are not in the public interest. In the event of such refusal, the landowner may either:

(1) **[Refile]** ***refile*** his application for final approval without the variations objected**[,]**; or

(2) **[File]** ***file*** a written request with the **[governing]** ***approving*** body that it hold a public hearing on his application for final approval.

If the landowner wishes to take either such alternate action he may do so at any time within which he shall be entitled to apply for final approval, or within **[thirty]** ***30*** additional days if the time for applying for final approval shall have already passed at the time when the landowner was advised that the development plan was not in substantial compliance. In the event the landowner shall fail to take either of these alternate actions within said time, he shall be deemed to have abandoned the development plan. Any such public hearing shall be held pursuant to public notice within **[thirty]** ***30*** days after request for the hearing is made by the landowner, and the hearing shall be conducted in the manner prescribed in this article for public hearings on applications for tentative approval. Within **[thirty]** ***30*** days after the conclusion of the hearing, the **[governing]** ***approving*** body shall by official written communication either grant final approval to the development plan or deny final approval. The grant or denial of final approval of the development plan shall, in cases arising under this section, be in the form and contain the findings required for an application for tentative approval set forth in this article.

(d) A development plan, or any part thereof, which has been given final approval shall be so certified without delay by the **[governing]** ***approving*** body and shall be filed of record forthwith in the office of the recorder of deeds before any development shall take place in accordance therewith.

Upon the filing of record of the development plan the zoning and subdivision regulations otherwise applicable to the land included in such plan shall cease to apply thereto. Pending completion **[within a reasonable time]**, ***in accordance with the time provisions stated in section 508,*** of said planned residential development or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of said development plan, or part thereof, as finally approved, shall be made except with the consent of the landowner. ***Upon approval of a final plat, the developer shall record the plat in accordance with the provisions of section 513(a) and post financial security in accordance with section 509.***

(e) In the event that a development plan, or a section thereof, is given final approval and thereafter the landowner shall abandon such plan or the section thereof that has been finally approved, and shall so notify the **[governing]** ***approving*** body in writing; or, in the event the landowner shall fail to commence and carry out the planned residential development **[within such reasonable period of time as may be fixed by ordinance]** ***in accordance with the time provisions stated in section 508*** after final approval has been granted, no development or further development shall take place on the property included in the development plan until after the said property **[is resubdivided and]** is reclassified by enactment of an amendment to the municipal zoning ordinance in the manner prescribed for such amendments in Article VI.

Section 77. The act is amended by adding sections and an article to read:

Section 712.1. Jurisdiction.—District justices shall have initial jurisdiction over proceedings brought under section 712.2.

Section 712.2. Enforcement Remedies.—(a) Any person, partnership or corporation, who or which has violated the planned residential development provisions of any ordinance enacted under this act or prior enabling laws shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than $500 plus all court costs, including reasonable attorney fees incurred by a municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the appropriate rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of planned residential development provisions shall be paid over to the municipality whose ordinance has been violated.

(b) The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgment pending a final adjudication of the violation and judgment.

(c) Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the municipality the right to commence any action for enforcement pursuant to this section.

Section 713. Compliance by Municipalities.—Municipalities with planned residential development ordinances shall have five years from the effective date of this amendatory act to comply with the provisions of this article.

ARTICLE VIII-A
Joint Municipal Zoning

Section 801-A. General Powers.—(a) For the purpose of permitting municipalities which cooperatively plan for their future to also regulate future growth and change in a cooperative manner, the governing body of each municipality, in accordance with the conditions and procedures set forth in this act, may cooperate with one or more municipalities to enact, amend and repeal joint municipal zoning ordinances in order to implement joint municipal comprehensive plans and to accomplish any of the purposes of this act.

(b) A joint municipal zoning ordinance shall be based upon an adopted joint municipal comprehensive plan and shall be prepared by a joint municipal planning commission established under the provisions of this act.

Section 802-A. Relation to County and Municipal Zoning.—The enactment by any municipality of a joint municipal zoning ordinance whose land is subject to county or municipal zoning shall constitute an immediate repeal of the county or municipal zoning ordinance within the municipality adopting such ordinance as of the effective date of the joint municipal zoning ordinance.

Section 803-A. Ordinance Provisions.—Joint municipal zoning ordinances may permit, prohibit, regulate, restrict and determine and may contain the same elements as authorized for municipal zoning ordinances by section 603.

Section 804-A. Zoning Purposes.—The provisions of joint municipal zoning ordinances shall be designed to serve the same purposes for the area of its jurisdiction as is required by section 604 for municipal zoning ordinances.

Section 805-A. Classifications.—The authorizations and requirements of section 605 shall be applicable to joint municipal zoning ordinances. No area of a municipality party to a joint municipal zoning ordinance shall be left unzoned.

Section 806-A. Statement of Community Development Objectives.—(a) Every joint municipal zoning ordinance shall contain a statement of community development objectives as defined by section 606.

(b) The statement of community development objectives shall be based upon the joint municipal comprehensive plan and may be supplemented by a

statement of legislative findings of the governing bodies party to the joint municipal zoning ordinance as defined by section 606.

(c) The community development objectives for a joint municipal zoning ordinance shall relate to the area within the jurisdiction of the ordinance, shall identify the community development objectives of each municipality party to the joint municipal zoning ordinance and the relationship of these objectives to those of the area and shall, in addition, include the basis for the geographic delineation of the area which the ordinance regulates.

Section 807-A. Preparation of Proposed Zoning Ordinance.—The requirements of section 607 as applicable to municipal zoning ordinances shall equally apply to the preparation of a joint municipal zoning ordinance except that:

(1) The joint municipal planning commission shall assume the preparation responsibilities of the planning agency and shall be directed by the governing bodies of the participating municipalities.

(2) At least one public meeting shall be held by the joint municipal planning commission within the area of jurisdiction of the proposed joint municipal zoning ordinance.

Section 808-A. Enactment of Zoning Ordinance.—(a) The procedural requirements of section 608 shall be applicable to the enactment of a joint municipal zoning ordinance.

(b) Each municipality party to a joint municipal zoning ordinance shall enact the ordinance and it shall not become effective until it has been properly enacted by all the participating municipalities.

(c) No municipality may withdraw from or repeal a joint municipal zoning ordinance during the first three years following the date of its enactment. If, at any time after the end of the second year following the enactment of a joint municipal zoning ordinance, a municipality wishes to repeal and withdraw from a joint municipal zoning ordinance, it shall enact an ordinance, which shall be effective no sooner than one year after its enactment, repealing the joint municipal zoning ordinance and shall provide immediately and concurrently one year's advanced written notice of its repeal and withdrawal to the governing bodies of all municipalities party to the joint municipal zoning ordinance. The repeal and withdrawal may become effective within less than one year with the unanimous approval, by ordinance, of the governing bodies of all municipalities party to the joint municipal zoning ordinance.

Section 809-A. Enactment of Zoning Ordinance Amendments.—(a) The procedural requirements for amendments to a joint municipal zoning ordinance shall be as required by section 609, except that all proposed amendments shall also be submitted to the joint municipal planning commission for review at least 30 days prior to the hearing on such proposed amendments.

(b) The governing bodies of the other participating municipalities shall submit their comments, including a specific recommendation to adopt or not to adopt the proposed amendment, to the governing body of the municipality within which the amendment is proposed no later than the date of the

public hearing. Failure to provide comments shall be construed as a recommendation to adopt the proposed amendments.

(c) No amendments to the joint municipal zoning ordinance shall be effective unless all of the participating municipalities approve the amendment.

Section 810-A. Procedure for Curative Amendments.—Curative amendments shall be filed in accordance with the requirements of section 609.1 with the municipality within which the landowner's property is located: Provided, however, That the governing body before which the curative amendment is brought shall not have the power to adopt any amendment to the joint municipal zoning ordinance without the approval of the other municipalities participating in the joint municipal zoning ordinance. The challenge shall be directed to the validity of the joint municipal zoning ordinance as it applies to the entire area of its jurisdiction.

Section 811-A. Area of Jurisdiction for Challenges.—In any challenge to the validity of the joint municipal zoning ordinance, the court shall consider the validity of the ordinance as it applies to the entire area of its jurisdiction as enacted and shall not limit consideration to any single constituent municipality.

Section 812-A. Procedure for Joint Municipal Curative Amendments.—The governing bodies of all the participating municipalities may declare the joint municipal zoning ordinance or portions thereof substantially invalid and prepare a municipal curative amendment pursuant to section 609.2. The provisions of section 609.2(4) shall apply to all municipalities participating in the joint municipal zoning ordinance.

Section 813-A. Publication, Advertisement and Availability of Ordinances.—The content of public notices and the procedures for the advertisement and enactment of joint municipal zoning ordinances and amendments shall be regulated by section 610.

Section 814-A. Registration of Nonconforming Uses.—The registration of nonconforming uses shall be as specified by section 613.

Section 815-A. Administration.—(a) The governing bodies of the municipalities adopting the joint municipal zoning ordinance may establish a joint zoning hearing board pursuant to the authority of section 904, except that:

(1) The joint municipal zoning ordinance shall either create a joint zoning hearing board to administer the entire joint municipal zoning ordinance or provide for the retention or creation of individual zoning hearing boards in each of the individual participating municipalities to administer the new joint municipal zoning ordinance as to properties located within each of the individual participating municipalities.

(2) These same procedures shall be followed by a joint zoning hearing board as set forth in Article IX for individual municipal zoning hearing boards.

(b) The joint municipal zoning ordinance shall specify the number of zoning officers to be appointed to administer the ordinance pursuant to section 614. One zoning officer may be appointed by each municipality to

administer the ordinance within the municipal boundaries or a single zoning officer may be appointed to administer the ordinance throughout the jurisdiction of the ordinance.

Section 816-A. Zoning Appeals.—All rights and procedures provided in Articles IX and X-A shall pertain to joint municipal zoning.

Section 817-A. Enforcement Penalties.—Penalties for violation of a joint municipal zoning ordinance shall be as specified in section 617.1.

Section 818-A. Enforcement Remedies.—(a) Enforcement remedies shall be as specified in section 617.

(b) In addition, the provisions of a joint municipal zoning ordinance shall be binding upon the municipalities and may be enforced by appropriate remedy by any one or more of the municipalities against any other municipality party thereto.

Section 819-A. Finances.—(a) The governing body of a municipality may appropriate and receive funds for a joint municipal zoning ordinance in the same manner as authorized for a municipal zoning ordinance by section 617.2.

(b) A joint municipal zoning ordinance shall specify the manner and extent of financing the costs for administration and enforcement, including the financial responsibilities for defending legal challenges to ~~the ordinance~~.

Section 820-A. Exemptions.—The exemptions for a joint municipal zoning ordinance shall be those identified by section 619.

Section 821-A. Existing Bodies.—Municipalities which, on or before the effective date of this amendatory act, established joint bodies under former Article XI-A of this act, shall have five years from the effective date of this amendatory act to comply with the provisions of this article.

Section 78. The heading of Article IX and section 901 of the act are reenacted and amended to read:

ARTICLE IX
Zoning Hearing Board *and other*
Administrative Proceedings

Section 901. **[Creation of Board]** *General Provisions.*—Every municipality which has enacted or enacts a zoning ordinance pursuant to this act or prior enabling laws, shall create a zoning hearing board. As used in this **[act]** *article*, unless the context clearly indicates otherwise, the term "board" shall refer to such zoning hearing board.

Section 79. Section 902 of the act is repealed.

Section 80. Section 903 of the act, amended October 4, 1978 (P.L.990, No.203), is reenacted and amended to read:

Section 903. Membership of Board.—(a) The membership of the board shall, upon the determination of the governing body, consist of either three or five residents of the municipality appointed by *resolution by* the governing body. The terms of office of a three member board shall be three years and shall be so fixed that the term of office of one member shall expire each year. The terms of office of a five member board shall be **[three]** *five* years and shall be so fixed that the term of office of **[no more than two**

members] *one member* of a five member board shall expire each year **[and of the initial appointments of the two additional members, one shall be appointed for a one year term and one shall be appointed for a two year term]**. If a three member board is changed to a five member board, the members of the existing three member board shall continue in office until their term of office would expire under prior law. The governing body shall appoint two additional members to the board with terms scheduled to expire in accordance with the provisions of this section. The board shall promptly notify the governing body of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the board shall hold no other office in the municipality**[, except that no more than one member of the board may also be a member of the planning commission]**.

[(b) A five member board shall not be changed to a three member board except upon an affirmative vote on the question by a majority ~~of the electors~~ of the municipality voting thereon at a referendum held at the municipal or general election prior to a year in which the terms of two of the members on the board expire.]

(b) The governing body may appoint by resolution at least one but no more than three residents of the municipality to serve as alternate members of the board. The term of office of an alternate member shall be three years. When seated pursuant to the provisions of section 906, an alternate shall be entitled to participate in all proceedings and discussions of the board to the same and full extent as provided by law for board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this act and as otherwise provided by law. Alternates shall hold no other office in the municipality, including membership on the planning commission and zoning officer. Any alternate may participate in any proceeding or discussion of the board but shall not be entitled to vote as a member of the board nor be compensated pursuant to section 907 unless designated as a voting alternate member pursuant to section 906.

Section 81. Sections 904 and 905 of the act are reenacted and amended to read:

Section 904. Joint Zoning Hearing Boards.—*(a)* Two or more municipalities may, by ordinances enacted in each, create a joint zoning hearing board in lieu of a separate board for each municipality. A joint board shall consist of two members appointed from among the residents of each municipality by its governing body.

(b) The term of office of members of joint boards shall be five years, except that of the two members first appointed from each municipality, the term of office of one member shall be three years. When any vacancies occur, the joint board shall promptly notify the governing body which appointed the member whose office has become vacant, and such governing body shall appoint a member for the unexpired portion of the term. Members of the joint board shall hold no other office in the participating municipality**[, except that no more than one member of the board appointed**

by any municipality may also be a member of a planning commission of the municipality from which such appointment is made].

(c) Where legal counsel is desired, an attorney, other than the solicitors of the participating municipalities, may be appointed to serve as counsel to the joint zoning hearing board.

(d) In all other respects, *including the appointment and seating of alternate members,* joint zoning hearing boards shall be governed by provisions of this act not inconsistent with the provisions of this section.

Section 905. Removal of Members.—Any board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the governing body which appointed the member, taken after the member has received **[fifteen]** *15* days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

Section 82. Section 906 of the act, amended October 4, 1978 (P.L.990, No.203), is reenacted and amended to read:

Section 906. Organization of Board.—*(a)* The board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the board, but the board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the board as provided in section 908.

(b) If, by reason of absence or disqualification of a member, a quorum is not reached, the chairman of the board shall designate as many alternate members of the board to sit on the board as may be needed to provide a quorum. Any alternate member of the board shall continue to serve on the board in all proceedings involving the matter or case for which the alternate was initially appointed until the board has made a final determination of the matter or case. Designation of an alternate pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

(c) The board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the municipality and laws of the Commonwealth. The board shall keep full public records of its business, *which records shall be the property of the municipality,* and shall submit a report of its activities to the governing body **[once a year]** *as requested by the governing body.*

Section 83. Section 907 of the act is reenacted and amended to read:

Section 907. Expenditures for Services.—Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the board may receive compensation for the performance of their duties, as may be fixed by the governing body, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the governing body. *Alternate members of the board may receive compensation, as may be fixed by the governing body, for the performance of their*

duties when designated as alternate members pursuant to section 906, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members of the governing body.

Section 84. Section 908 of the act, amended June 1, 1972 (P.L.333, No.93), December 10, 1974 (P.L.822, No.272) and July 13, 1979 (P.L.105, No.43), is reenacted and amended to read:

Section 908. Hearings.—The board shall conduct hearings and make decisions in accordance with the following requirements:

(1) **[Notice]** ***Public notice*** shall be given **[to the public,]** ***and written notice shall be given to*** the applicant, the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for the same. **[Notices]** ***Written notices*** shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the board. **[The governing body may establish reasonable fees, based on cost, to be paid by the applicant and by persons requesting any notice not required by ordinance.]** In addition to the ***written*** notice provided herein, ***written*** notice of said hearing shall be conspicuously posted on the affected tract of land ***at least one week prior to the hearing.***

(1.1) The governing body may prescribe reasonable fees with respect to hearings before the zoning hearing board. Fees for said hearings may include compensation for the secretary and members of the zoning hearing board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the zoning hearing board, expenses for engineering, architectural or other technical consultants or expert witness costs.

(1.2) The hearing shall be held within 60 days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.

(2) The hearings shall be conducted by the board or the board may appoint any member as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the board**[, but]**; ***however,*** the **[parties may]** ***appellant or the applicant, as the case may be, in addition to the municipality, may, prior to the decision of the hearing,*** waive decision or findings by the board and accept the decision or findings of the hearing officer as final.

(3) The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or community organizations permitted to appear by the board. The board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the board for that purpose.

(4) The chairman or acting chairman of the board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.

(5) The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

(6) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(7) The board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings **[and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost]**. ***The appearance fee for a stenographer shall be shared equally by the applicant and the board. The cost of the original transcript shall be paid by the board if the transcript is ordered by the board or hearing officer or shall be paid by the person appealing from the decision of the board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.***

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

(9) The board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within **[forty-five]** ***45*** days after the last hearing before the board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this act or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the board shall make his report and recommendations available to the parties ***within 45 days*** and the parties shall be entitled to make written representations thereon to the board prior to final decision or entry of findings, and the board's decision shall be entered no later than **[forty-five]** ***30*** days after the **[decision]** ***report*** of the hearing officer. Where the board fails to render the decision within the period required by this subsection, or fails to hold the required hearing within **[sixty]** ***60*** days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing ***or on the record*** to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the board to meet or render a decision as

hereinabove provided, the **[municipality]** ***board*** shall give public notice of said decision within ten days ***from the last day it could have met to render a decision*** in the same manner as provided in subsection (1) of this section. ***If the board shall fail to provide such notice, the applicant may do so.*** Nothing in this subsection shall prejudice the right of any party opposing the application to **[urge that such decision is erroneous]** ***appeal the decision to a court of competent jurisdiction.***

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

Section 85. The act is amended by adding a section to read:

Section 908.1. Mediation Option.—(a) Parties to proceedings authorized in this article and Article X-A may utilize mediation as an aid in completing such proceedings. In proceedings before the zoning hearing board, in no case shall the zoning hearing board initiate mediation or participate as a mediating party. Mediation shall supplement, not replace, those procedures in this article and Article X-A once they have been formally initiated. Nothing in this section shall be interpreted as expanding or limiting municipal police powers or as modifying any principles of substantive law.

(b) Participation in mediation shall be wholly voluntary. The appropriateness of mediation shall be determined by the particulars of each case and the willingness of the parties to negotiate. Any municipality offering the mediation option shall assure that, in each case, the mediating parties, assisted by the mediator as appropriate, develop terms and conditions for:

(1) Funding mediation.

(2) Selecting a mediator who, at a minimum, shall have a working knowledge of municipal zoning and subdivision procedures and demonstrated skills in mediation.

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

(4) Suspending time limits otherwise authorized in this act, provided there is written consent by the mediating parties, and by an applicant or municipal decisionmaking body if either is not a party to the mediation.

(5) Identifying all parties and affording them the opportunity to participate.

(6) Subject to legal restraints, determining whether some or all of the mediation sessions shall be open or closed to the public.

(7) Assuring that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the appropriate decisionmaking body pursuant to the authorized procedures set forth in the other sections of this act.

(c) No offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceedings.

Section 86. Section 909 of the act is repealed.

Section 87. The act is amended by adding a section to read:

Section 909.1. Jurisdiction.—(a) The zoning hearing board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

(1) Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to sections 609.1 and 916.1(a)(2).

(2) Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the municipality and a zoning hearing board has not been previously established, the appeal raising procedural questions shall be taken directly to court.

(3) Appeals from the determination of the zoning officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

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

(5) Applications for variances from the terms of the zoning ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 910.2.

(6) Applications for special exceptions under the zoning ordinance or flood plain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to section 912.1.

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

(8) Appeals from the zoning officer's determination under section 916.2.

(9) Appeals from the determination of the zoning officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving Article V or VII applications.

(b) The governing body or, except as to clauses (3), (4) and (5), the planning agency, if designated, shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

(1) All applications for approvals of planned residential developments under Article VII pursuant to the provisions of section 702.

(2) All applications pursuant to section 508 for approval of subdivisions or land developments under Article V. Any provision in a subdivision and land development ordinance requiring that final action concerning subdivision and land development applications be taken by a planning

agency rather than the governing body shall vest exclusive jurisdiction in the planning agency in lieu of the governing body for purposes of the provisions of this paragraph.

(3) Applications for conditional use under the express provisions of the zoning ordinance pursuant to section 603(c)(2).

(4) Applications for curative amendment to a zoning ordinance pursuant to sections 609.1 and 916.1(a)(2).

(5) All petitions for amendments to land use ordinances, pursuant to the procedures set forth in section 609. Any action on such petitions shall be deemed legislative acts, provided that nothing contained in this clause shall be deemed to enlarge or diminish existing law with reference to appeals to court.

(6) Appeals from the determination of the zoning officer or the municipal engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to application for land development under Articles V and VII. Where such determination relates only to development not involving an Article V or VII application, the appeal from such determination of the zoning officer or the municipal engineer shall be to the zoning hearing board pursuant to subsection (a)(9). Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the planning agency, all appeals from determinations under this paragraph shall be to the planning agency and all appeals from the decision of the planning agency shall be to court.

(7) Applications for a special encroachment permit pursuant to section 405 and applications for a permit pursuant to section 406.

Section 88. Section 910 of the act is repealed.

Section 89. The act is amended by adding sections to read:

Section 910.1. Applicability of Judicial Remedies.—Nothing contained in this article shall be construed to deny the appellant the right to proceed directly to court where appropriate, pursuant to the Pennsylvania Rules of Civil Procedure No. 1091 (relating to action in mandamus).

Section 910.2. Zoning Hearing Board's Functions; Variances.—(a) The board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The board may by rule prescribe the form of application and may require preliminary application to the zoning officer. The board may grant a variance, provided that all of the following findings are made where relevant in a given case:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

(b) In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance.

Section 90. Section 912 of the act is repealed.

Section 91. The act is amended by adding a section to read:

Section 912.1. Zoning Hearing Board's Functions; Special Exception.—Where the governing body, in the zoning ordinance, has stated special exceptions to be granted or denied by the board pursuant to express standards and criteria, the board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the board may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance.

Section 92. Sections 913 and 913.1 of the act are repealed.

Section 93. The act is amended by adding sections to read:

Section 913.2. Governing Body's Functions; Conditional Uses.—Where the governing body, in the zoning ordinances, has stated conditional uses to be granted or denied by the governing body pursuant to express standards and criteria, the governing body shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. In granting a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act ~~in the~~ zoning ordinance.

Section 913.3. Parties Appellant Before the Board.—Appeals under section 909.1(a)(1), (2), (3), (4), (7), (8) and (9) may be filed with the board in writing by the landowner affected, any officer or agency of the municipality, or any person aggrieved. Requests for a variance under section 910.2 and for special exception under section 912.1 may be filed with the board by any landowner or any tenant with the permission of such landowner.

Section 94. Section 914 of the act is repealed.

Section 95. The act is amended by adding a section to read:

Section 914.1. Time Limitations.—(a) No person shall be allowed to file any proceeding with the board later than 30 days after an application for

development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice, knowledge, or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan pursuant to section 709 or from an adverse decision by a zoning officer on a challenge to the validity of an ordinance or map pursuant to section 916.2 shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

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

Section 96. Section 915 of the act is repealed.

Section 97. The act is amended by adding a section to read:

Section 915.1. Stay of Proceedings.—(a) Upon filing of any proceeding referred to in section 913.3 and during its pendency before the board, all land development pursuant to any challenged ordinance, order or approval of the zoning officer or of any agency or body, and all official action thereunder, shall be stayed unless the zoning officer or any other appropriate agency or body certifies to the board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the board or by the court having jurisdiction of zoning appeals, on petition, after notice to the zoning officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the board.

(b) After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court.

(c) The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.

(d) If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond

and the appellate court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by the petitioner.

Section 98. Section 916 of the act is repealed.

Section 99. The act is amended by adding sections to read:

Section 916.1. Validity of Ordinance; Substantive Questions.—(a) A landowner who, on substantive grounds, desires to challenge the validity of an ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest shall submit the challenge either:

(1) to the zoning hearing board under section 909.1(a); or

(2) to the governing body under section 909.1(b)(4), together with a request for a curative amendment under section 609.1.

(b) Persons aggrieved by a use or development permitted on the land of another by an ordinance or map, or any provision thereof, who desires to challenge its validity on substantive grounds shall first submit their challenge to the zoning hearing board for a decision thereon under section 909.1(a)(1).

(c) The submissions referred to in subsections (a) and (b) shall be governed by the following:

(1) In challenges before the zoning hearing board, the challenging party shall make a written request to the board that it hold a hearing on its challenge. The request shall contain the reasons for the challenge. Where the landowner desires to challenge the validity of such ordinance and elects to proceed by curative amendment under section 609.1, his application to the governing body shall contain, in addition to the requirements of the written request hereof, the plans and explanatory materials describing the use or development proposed by the landowner in lieu of the use or development permitted by the challenged ordinance or map. Such plans or other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a permit, so long as they provide reasonable notice of the proposed use or development and a sufficient basis for evaluating the challenged ordinance or map in light thereof. Nothing herein contained shall preclude the landowner from first seeking a final approval before submitting his challenge.

(2) If the submission is made by the landowner to the governing body under subsection (a)(2), the request also shall be accompanied by an amendment or amendments to the ordinance proposed by the landowner to cure the alleged defects therein.

(3) If the submission is made to the governing body, the municipal solicitor shall represent and advise it at the hearing or hearings referred to in section 909.1(b)(4).

(4) The governing body may retain an independent attorney to present the defense of the challenged ordinance or map on its behalf and to present their witnesses on its behalf.

(5) Based upon the testimony presented at the hearing or hearings, the governing body or the zoning board, as the case may be, shall determine whether the challenged ordinance or map is defective, as alleged by the landowner. If a challenge heard by a governing body is found to have merit, the governing body shall proceed as provided in section 609.1. If a challenge heard by a zoning hearing board is found to have merit, the decision of the zoning hearing board shall include recommended amendments to the challenged ordinance which will cure the defects found. In reaching its decision, the zoning hearing board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:

(i) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;

(ii) if the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or map;

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

(iv) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and

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

(6) The governing body or the zoning hearing board, as the case may be, shall render its decision within 45 days after the conclusion of the last hearing.

(7) If the governing body or the zoning board, as the case may be, fails to act on the landowner's request within the time limits referred to in paragraph (6), a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.

(d) The zoning hearing board or governing body, as the case may be, shall commence its hearings within 60 days after the request is filed unless the landowner requests or consents to an extension of time.

(e) Public notice of the hearing shall include notice that the validity of the ordinance or map is in question and shall give the place where and the times when a copy of the request, including any plans, explanatory material or proposed amendments may be examined by the public.

(f) The challenge shall be deemed denied when:

(1) the zoning hearing board or governing body, as the case may be, fails to commence the hearing within the time limits set forth in subsection (d);

(2) the governing body notifies the landowner that it will not adopt the curative amendment;

(3) the governing body adopts another curative amendment which is unacceptable to the landowner; or

(4) the zoning hearing board or governing body, as the case may be, fails to act on the request 45 days after the close of the last hearing on the request, unless the time is extended by mutual consent by the landowner and municipality.

(g) Where, after the effective date of this act, a curative amendment proposal is approved by the grant of a curative amendment application by the governing body pursuant to section 909.1(b)(4) or a validity challenge is sustained by the zoning hearing board pursuant to section 909.1(a)(1) or the court acts finally on appeal from denial of a curative amendment proposal or a validity challenge, and the proposal or challenge so approved requires a further application for subdivision or land development, the developer shall have two years from the date of such approval to file an application for preliminary or tentative approval pursuant to Article V or VII. Within the two-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. Upon the filing of the preliminary or tentative plan, the provisions of section 508(4) shall apply. Where the proposal appended to the curative amendment application or the validity challenge is approved but does not require further application under any subdivision or land development ordinance, the developer shall have one year within which to file for a building permit. Within the one-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. During these protected periods, the court shall retain or assume jurisdiction for the purpose of awarding such supplemental relief as may be necessary.

Section 916.2. Procedure to Obtain Preliminary Opinion.—In order not to unreasonably delay the time when a landowner may secure assurance that the ordinance or map under which he proposed to build is free from challenge, and recognizing that the procedure for preliminary approval of his development may be too cumbersome or may be unavailable, the landowner may advance the date from which time for any challenge to the ordinance or map will run under section 914.1 by the following procedure:

(1) The landowner may submit plans and other materials describing his proposed use or development to the zoning officer for a preliminary opinion as to their compliance with the applicable ordinances and maps. Such plans and other materials shall not be required to meet the standards prescribed for preliminary, tentative or final approval or for the issuance of a building permit so long as they provide reasonable notice of the proposed use or development and a sufficient basis for a preliminary opinion as to its compliance.

(2) If the zoning officer's preliminary opinion is that the use or development complies with the ordinance or map, notice thereof shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall include a general description of the proposed use or development and its location, by some readily identifiable directive, and the place and times where the plans and other materials may be examined by the public. The favorable preliminary approval under section 914.1 and the time therein specified for commencing a proceeding with the board shall run from the time when the second notice thereof has been published.

Section 100. Article X of the act is repealed.

Section 101. The act is amended by adding an article to read:

ARTICLE X-A
Appeals to Court

Section 1001-A. Land Use Appeals.—The procedures set forth in this article shall constitute the exclusive mode for securing review of any decision rendered pursuant to Article IX or deemed to have been made under this act.

Section 1002-A. Jurisdiction and Venue on Appeal; Time for Appeal.—All appeals from all land use decisions rendered pursuant to Article IX shall be taken to the court of common pleas of the judicial district wherein the land is located and shall be filed within 30 days after entry of the decision as provided in 42 Pa.C.S. § 5572 (relating to time of entry of order) or, in the case of a deemed decision, within 30 days after the date upon which notice of said deemed decision is given as set forth in section 908(9) of this act.

Section 1003-A. Appeals to Court; Commencement; Stay of Proceedings.—(a) Land use appeals shall be entered as of course by the prothonotary or clerk upon the filing of a land use appeal notice which concisely sets forth the grounds on which the appellant relies. The appeal notice need not be verified. The land use appeal notice shall be accompanied by a true copy thereof.

(b) Upon filing of a land use appeal, the prothonotary or clerk shall forthwith, as of course, send to the governing body, board or agency whose decision or action has been appealed, by registered or certified mail, the copy of the land use appeal notice, together with a writ of certiorari commanding said governing body, board or agency, within 20 days after receipt thereof, to certify to the court its entire record in the matter in which the land use appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to the governing body, board or agency at the time it received the writ of certiorari.

(c) If the appellant is a person other than the landowner of the land directly involved in the decision or action appealed from, the appellant, within seven days after the land use appeal is filed, shall serve a true copy of the land use appeal notice by mailing said notice to the landowner or his attorney at his last known address. For identification of such landowner, the appellant may rely upon the record of the municipality and, in the event of good faith mistakes as to such identity, may make such service nunc pro tunc by leave of court.

(d) The filing of an appeal in court under this section shall not stay the action appealed from, but the appellants may petition the court having jurisdiction of land use appeals for a stay. If the appellants are persons who are seeking to prevent a use or development of the land of another, whether or not a stay is sought by them, the landowner whose use or development is in question may petition the court to order the appellants to post bond as a condition to proceeding with the appeal. After the petition for posting a bond is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the landowners to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for posting a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court. The question of the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the respondent to the petition for posting a bond to post a bond shall be interlocutory. If an appeal is taken by a respondent to the petition for posting a bond from an order of the court dismissing a land use appeal for refusal to post a bond, such responding party, upon motion of petitioner and, after hearing in the court having jurisdiction of land use appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by petitioner.

Section 1004-A. Intervention.—Within the 30 days first following the filing of a land use appeal, if the appeal is from a board or agency of a municipality, the municipality and any owner or tenant of property directly involved in the action appealed from may intervene as of course by filing a notice of intervention, accompanied by proof of service of the same, upon each appellant or each appellant's counsel of record. All other intervention shall be governed by the Pennsylvania Rules of Civil Procedure.

Section 1005-A. Hearing and Argument of Land Use Appeal.—If, upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, a judge of the court may hold a hearing to receive additional evidence, may remand the case to the body, agency or officer whose decision or order has been brought up for review, or may refer the case to a referee to receive additional evidence, provided that appeals brought before the court pursuant to section 916.1 shall not be remanded for further hearings before any body, agency or officer of the municipality. If the record below includes findings of fact made by the governing body, board or agency whose decision or action is brought up for review and the court does not take additional evidence or appoint a referee to take additional evidence, the findings of the governing body, board or agency shall not be disturbed by the court if supported by substantial evidence. If the record does not include findings of fact or if additional evidence is taken by the court or by a referee, the court shall make its own findings of fact based on the record below as supplemented by the additional evidence, if any.

Section 1006-A. Judicial Relief.—(a) In a land use appeal, the court shall have power to declare any ordinance or map invalid and set aside or modify any action, decision or order of the governing body, agency or officer of the municipality brought up on appeal.

(b) Where municipalities have adopted a joint municipal comprehensive plan and enacted a zoning ordinance or ordinances consistent with the joint municipal comprehensive plan within a region pursuant to Articles VIII-A and XI, the court, when determining the validity of a challenge to such a municipality's zoning ordinance, shall consider the zoning ordinance or ordinances as they apply to the entire region and shall not limit its consideration to the application of the zoning ordinance within the boundaries of the respective municipalities.

(c) If the court finds that an ordinance or map, or a decision or order thereunder, which has been brought up for review unlawfully prevents or restricts a development or use which has been described by the landowner through plans and other materials submitted to the governing body, agency or officer of the municipality whose action or failure to act is in question on the appeal, it may order the described development or use approved as to all elements or it may order it approved as to some elements and refer other elements to the governing body, agency or officer having jurisdiction thereof for further proceedings, including the adoption of alternative restrictions, in accordance with the court's opinion and order.

(d) Upon motion by any of the parties or upon motion by the court, the judge of the court may hold a hearing or hearings to receive additional evidence or employ experts to aid the court to frame an appropriate order. If the court employs an expert, the report or evidence of such expert shall be available to any party and he shall be subject to examination or cross-examination by any party. He shall be paid reasonable compensation for his services which may be assessed against any or all of the parties as determined by the court. The court shall retain jurisdiction of the appeal during the pendency of any such further proceedings and may, upon motion of the landowner, issue such supplementary orders as it deems necessary to protect the rights of the landowner as declared in its opinion and order.

(e) The fact that the plans and other materials are not in a form or are not accompanied by other submissions which are required for final approval of the development or use in question or for the issuance of permits shall not prevent the court from granting the definitive relief authorized. The court may act upon preliminary or sketch plans by framing its decree to take into account the need for further submissions before final approval is granted.

Section 102. The heading of Article XI is reenacted to read:

ARTICLE XI
Joint Municipal Planning Commissions

Section 103. Sections 1101, 1102, 1103 and 1104 of the act are reenacted and amended to read:

Section 1101. Legislative Finding and Declaration of Policy.—For the purpose of *encouraging municipalities to effectively plan for their future*

development and to coordinate their planning with neighboring municipalities, counties and other governmental agencies, and promoting health, safety, morals and the general welfare of the various areas in the Commonwealth through the effective development of such areas, the following powers for the establishment ***and operation*** of joint municipal planning commissions are hereby granted.

Section 1102. Creation, Appointment and Operation of Joint Municipal Planning Commission.—The governing bodies of two or more municipalities may by ordinance **[or resolution]** authorize the establishment and participation or membership in and support of, a joint municipal planning commission. The number and qualifications of the members of such planning commission and their terms and method of appointment or removal shall be such as may be determined and agreed upon by the governing bodies. Members of a joint municipal planning commission shall serve without salary but may be paid expenses, incurred in the performance of their duties. The joint municipal planning commission shall elect a chairman whose term shall not exceed one year and who shall be eligible for reelection. The commission may create and fill such other offices as it may determine. Every joint municipal planning commission shall adopt rules for the transactions, findings and determinations, which record shall be a public record. Each participating or member municipality may from time to time, upon the request of the joint municipal planning commission, assign or detail to the commission any **[employes]** ***employees*** of the municipality to make special surveys or studies.

Section 1103. Finances, Staff and Program.—(a) The governing bodies of municipalities shall have the authority to appropriate funds for the purpose of contributing to the operation of a joint municipal planning commission. A joint municipal planning commission, with the consent of all the governing bodies, may also receive grants from the Federal or State governments, or from individuals or foundations, and shall have the authority to contract therewith. Every joint municipal planning commission shall have the power to appoint such **[employes]** ***employees*** and staff as it may deem necessary for its work, and contract with planners and other consultants for the services it may require to the extent permitted by its financial resources. Each such commission may also perform planning services for any municipality which is not a member thereof and may charge fees for the work. A joint municipal planning commission may also prepare and sell maps, reports, bulletins or other material and establish reasonable charges therefor.

(a.1) A joint municipal planning commission shall, at the request of the governing bodies of the participating or member municipalities, have the power and shall be required to undertake any of the activities specified in section 209.1. Such activities shall relate to the area encompassed by the participating or member municipalities.

(b) **[A joint municipal planning commission may provide planning assistance and do planning work, including surveys, land use studies, urban renewal plans, technical services and other elements of comprehensive planning and planning effectuation programs in and for any participating or member municipality and for]** ***For*** this purpose, ***a joint municipal planning***

commission may, with the consent of all the governing bodies, accept and utilize any funds, personnel or other assistance made available by the Federal or State governments or any of their agencies, or from individuals or foundations, and for the purposes of receiving and using Federal or State planning grants for provision of **[urban]** planning assistance may enter into agreements or contracts regarding acceptance or utilization of the funds or assistance.

(c) The ordinance which creates a joint municipal planning commission shall:

(1) State the purpose for the creation of the planning commission.

(2) Specify which of the activities identified by this act the joint municipal planning commission shall be authorized to undertake.

(3) Specify which activities shall remain with the local planning commissions, when they are retained.

(4) Specify the notice and procedures which a member municipality must follow when withdrawing from the joint municipal planning commission.

(5) Specify the notice and procedures when the member municipalities decide to dissolve the joint municipal planning commission.

Section 1104. Preparation of Comprehensive Plan.—***(a)*** Every joint municipal planning commission **[shall]** ***may*** prepare and maintain a comprehensive plan, in accordance with the provisions of this act, for the guidance of the continuing development of the area encompassed by the participating or member municipalities. ***The governing bodies shall have the power to adopt and amend the joint municipal comprehensive plan. Said joint municipal comprehensive plan shall be a prerequisite for a joint municipal zoning ordinance as specified in this act.***

(b) Such joint municipal comprehensive plan shall specifically identify issues of significance to the area which is encompassed by the participating or member municipalities and shall specify those municipal activities which will require coordination or cooperation among them.

(c) In the preparation of the joint municipal comprehensive plan, consideration shall be given to the comprehensive plans of the county, adjoining municipalities and the member or participating municipalities in order that the objectives of each plan can be protected to the greatest extent possible and to attain consistency between the various plans and the joint municipal comprehensive plan.

Section 104. Section 1105 of the act is reenacted to read:

Section 1105. Cooperation Among Joint Municipal Planning Commission, Municipalities and Others.—Every joint municipal planning commission shall encourage the cooperation of the participating municipalities in matters which concern the integrity of the comprehensive plan or maps prepared by the commission, and, as an aid toward coordination, all municipalities and public officials shall upon request furnish to the joint municipal planning commission within a reasonable time the available maps, plans, reports, statistical or other information such commission may require for its work.

Section 105. Section 1106 of the act is reenacted and amended to read:

Section 1106. Established Regional Planning Commission.—Municipalities which are presently participating in an existing regional planning commission **[may elect to comply with and be governed by the provisions of this act]** ***or a joint municipal planning commission shall comply with and be governed by the provisions of this act within five years from the effective date of this amendatory act.***

Section 106. Section 1107 of the act is reenacted to read:

Section 1107. Saving Clause.—The passage of this act and the repeal by it of any prior enabling laws relating to regional planning shall not invalidate any regional planning commission created under such other laws. This act, in such respect, shall be deemed a continuation and codification of such prior enabling laws.

Section 107. Article XI-A of the act is repealed.

Section 108. The heading of Article XII and section 1201 of the act are reenacted to read:

ARTICLE XII
Repeals

Section 1201. Specific Repeals.—The following acts and parts of acts and amendments thereof are repealed to the extent hereinafter specified:

(1) Section 12, act of May 16, 1891 (P.L.75, No.59), entitled "An act in relation to the laying out, opening, widening, straightening, extending or vacating streets and alleys, and the construction of bridges in the several municipalities of this Commonwealth, the grading, paving, macadamizing or otherwise improving streets and alleys, providing for ascertaining the damages to private property resulting therefrom, the assessment of the damages, costs and expenses thereof upon the property benefited, and the construction of sewers and payment of the damages, costs and expenses thereof, including damages to private property resulting therefrom," as to cities of the second class A, incorporated towns and townships of the first and second class.

(2) Sections 1151, 1152, 1153, 1154, 1155, 1156, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1711, 1721, 1722, 2706, 2707, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209 and 3210, act of February 1, 1966 (P.L.1656, No.581), known as "The Borough Code," absolutely.

(3) Sections 2001, 3015, 3016, 3061, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3107.1, 3107.2, 3108, 3109, 3110, 3111, 3201, 3202 and 3203, act of June 24, 1931 (P.L.1206, No.331), known as "The First Class Township Code," reenacted and amended May 27, 1949 (P.L.1955, No.569), absolutely.

(4) Sections 2901, 2902, 2903, 2904, 2905, 2906, 3701, 3702, 4001, 4002, 4003, 4004, 4005, 4006, 4101, 4102, 4103, 4104, 4105, 4106, 4107, 4110, 4111, 4112, 4113, 4114, 4120, 4121, 4122, 4123, 4124, 4125, 4126, 4127, 4128 and 4129, act of June 23, 1931 (P.L.932, No.317), known as "The Third Class City Code," reenacted and amended June 28, 1951 (P.L.662, No.164), absolutely.

(5) Sections 1201-A, 1202-A, 1203-A, 1204-A, 1205-A, 1206-A, 1207-A, 1208-A, 1907.1, 1907.2, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2051, 2052, 2053, 2054, 2055, 2056 and 2057, act of May 1, 1933 (P.L.103, No.69), known as "The Second Class Township Code," reenacted and amended July 10, 1947 (P.L.1481, No.567), absolutely.

(6) The act of April 18, 1945 (P.L.258, No.117), entitled "An act requiring cities, boroughs, towns and townships to notify adjacent political subdivisions of proposed streets, roads and highways leading into them," as to cities of the second class A and third class, boroughs, incorporated towns and townships of the first and second class.

(7) Sections 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038 and 2039, act of August 9, 1955 (P.L.323, No.130), known as "The County Code," absolutely.

(8) Sections 2201 through 2211 and 2220 through 2239, act of July 28, 1953 (P.L.723, No.230), known as the "Second Class County Code," in so far as they relate to counties of the second class A.

Section 109. Section 1202 of the act is reenacted and amended to read:

Section 1202. General Repeal.—All other acts and parts of acts are repealed in so far as they are inconsistent herewith, but this act shall not repeal or modify any of the provisions of ***68 Pa.C.S. Pt. II Subpt. B (relating to condominiums),*** the "Public Utility Law," or any laws administered by the Department of Highways of the Commonwealth of Pennsylvania.

Section 110. (a) The provisions of the act of June 9, 1982 (P.L.441, No.130), which amended the Pennsylvania Municipalities Planning Code, relating to sections 107(22) and 508 shall apply to any land development or subdivision pending prior to or on August 8, 1982, before a municipality. Any subdivision or land development for which preliminary plans were approved by a municipality within the five-year period immediately preceding August 8, 1982, shall not be adversely affected by any intervening or subsequent change in municipal ordinances or plans pertaining to zoning classification or density, building, lot, street or utility location enacted subsequent to submission of the preliminary plat provided landowner has commenced or does commence, installation of the improvements depicted upon the approved final plat within three years of approval of same.

(b) The provisions of this amendatory act relating to section 603 shall apply to any pending special exception or conditional use prior to or on August 8, 1982.

(c) The provisions of this amendatory act relating to section 603 shall apply to previously approved conditional uses or special exceptions as follows:

(1) If no preliminary plan has been filed, applicant shall have six months from August 8, 1982, in which to do so and, in that event, all provisions of the act of June 9, 1982 (P.L.441, No.130), pertaining to section 603 shall apply.

(2) If preliminary plans for the entire development or any section thereof have been filed prior to August 8, 1982, such conditional use or

special exception shall not be affected by any change in municipal ordinances or plans pertaining to zoning classification or density, or lot, building, street or utility location, enacted subsequent to the filing of the special exception or conditional use application provided the conditional use approval or special exception approval did not contain a specific and express provision to the contrary.

Section 111. This act shall take effect in 60 days.

APPROVED—The 21st day of December, A. D. 1988.

ROBERT P. CASEY