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Engineering & Related Services

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Ordinances (SALDO) and Stormwater Ordinance Enforcement

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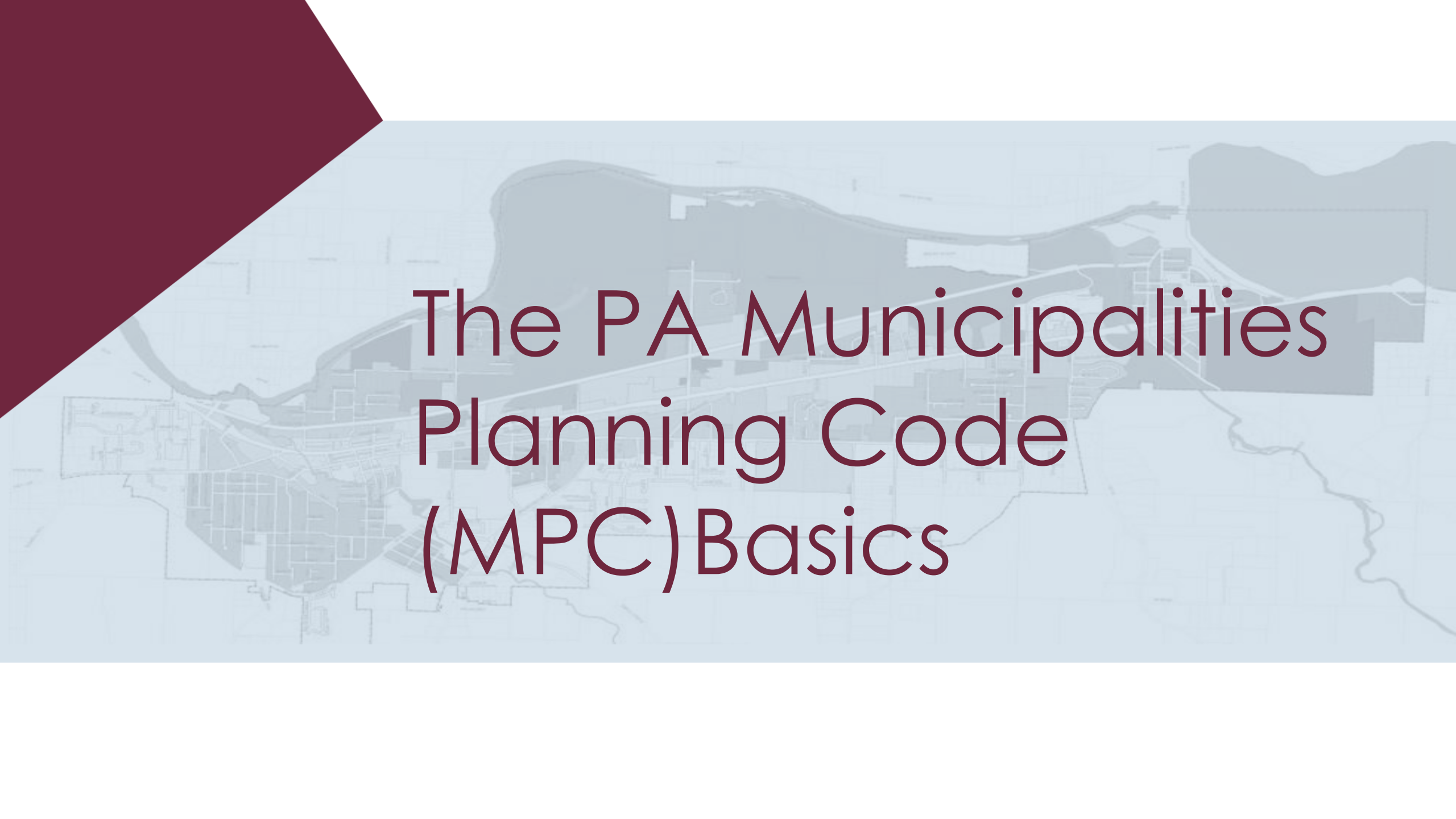
Laura Ludwig, AICP & Ben Gilberti, P.E.

Today's Learning Objectives

- > Brief review of the PA MPC
- > Discuss and learn about several processes outlined in the MPC, including land development approvals, financial securities and bonds for public improvements, modification requests, Stormwater Management ordinances.
- > Share tips and insights from real life municipal examples on how to overcome various obstacles and challenges related to land development and stormwater ordinance review



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The PA Municipalities Planning Code (MPC) Basics

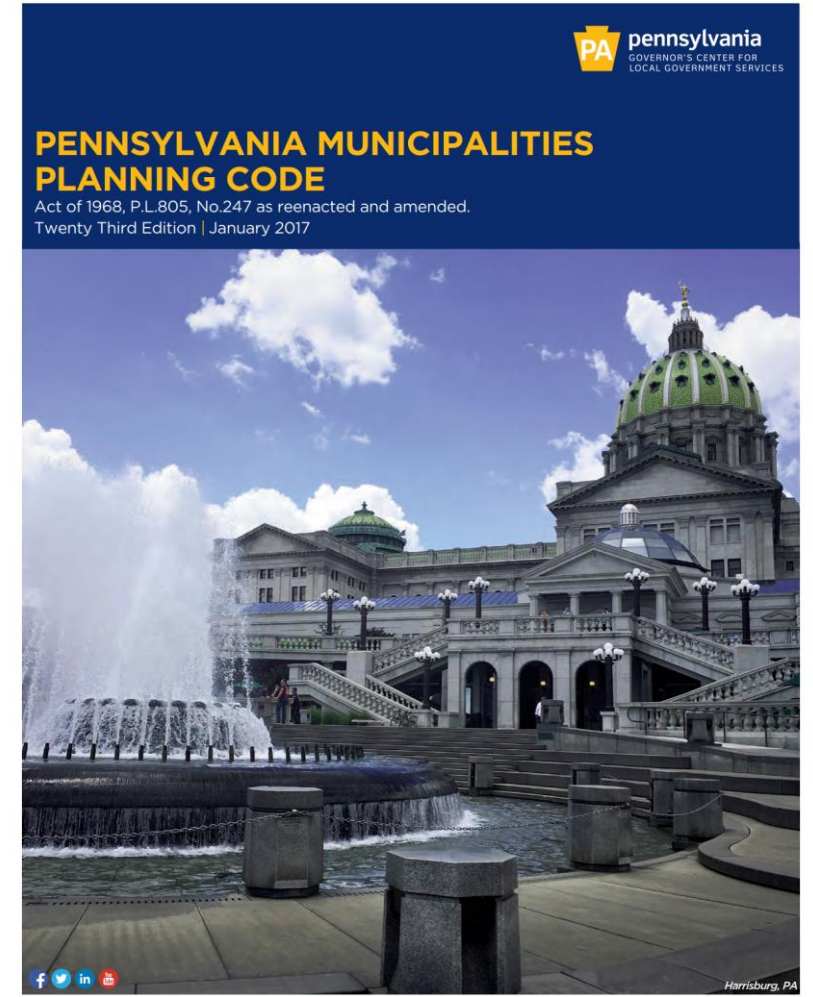
What is the PA MPC?

- > Act of 1968, P.L. 805, No. 247, as reenacted and amended
- > The PA MPC is the uniform planning and land use enabling law for all municipalities and counties throughout Pennsylvania, including those under home rule (excluding the cities of Philadelphia and Pittsburgh!).
- > The PA MPC provides provisions and regulations for subdivision and land development ordinances, zoning ordinances, comprehensive land use planning, municipal capital improvement planning, impact fees, and municipal zoning hearing boards, including variances from a zoning ordinance.

What is the PA MPC?

An act that empowers municipalities to:

- > guide their development according to the community's vision and best interests
- > govern it in a uniform and consistent way



What is the PA MPC?

The MPC provides regulations, processes, and procedures for the following:

- > Planning Commissions
- > Zoning Hearing Boards
- > Comprehensive Plans
- > Zoning Ordinances and Amendments
- > Subdivision and Land Development Ordinances and Amendments
- > Capital Improvements Planning
- > Municipal Impact Fees
- > Financial Security/Bonds for Improvements

With power comes responsibility ...

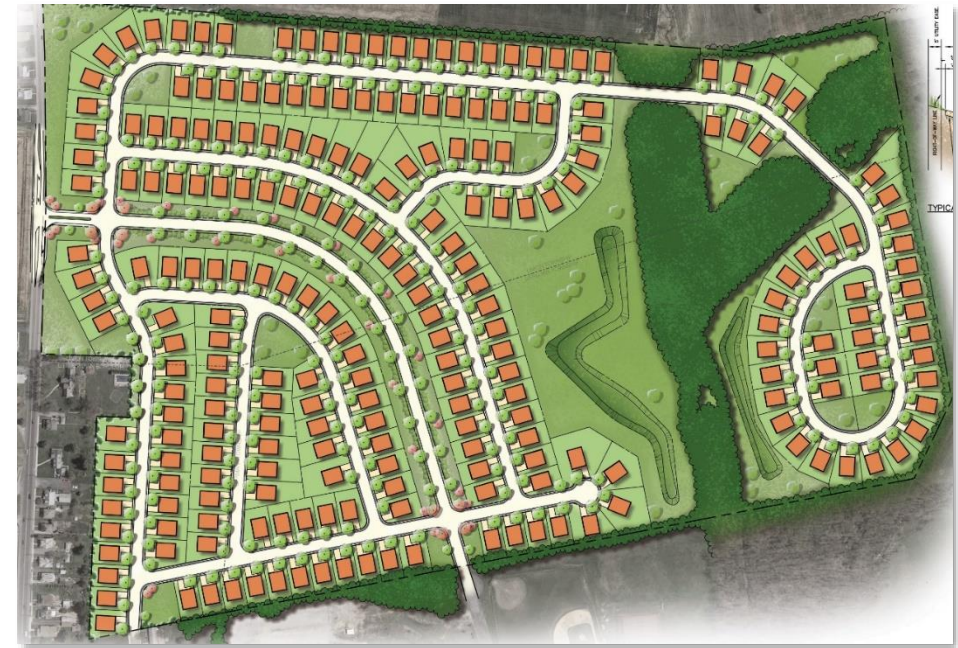


The MPC requires municipalities to follow certain processes and procedures so that applicants, whether a developer or a resident, know their requests will be considered fairly and in a timely manner.

When does the SALDO apply?

Any time one lot or two or more contiguous lots, tracts or parcels are improved to include:

- > Construction of two or more residential **buildings** (whether proposed initially or in phases) OR any number of non-residential buildings (regardless of the number of occupants or tenure)
- > **Allocation of space** among two or more occupants for streets, common areas, leaseholders, condominiums, building groups or other features



Definitions in the MPC – Subdivision

Subdivision is defined in Section 107 as follows:

- > The **division or re-division of a lot, tract, or parcel of land** 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 dwelling, shall be exempted.



Definitions in the MPC – Land Development

Land Development, as defined in Section 107, **excludes** the following developments in accordance with Section 503(1.1):

- > The conversion of a single-family detached dwelling (less than 3 units);
- > The addition of an accessory building (including farm/agricultural buildings); or
- > The addition or conversion of buildings or rides within the confines of an enterprise that could be considered an amusement park.



Image by: kartono subagio from Pixabay



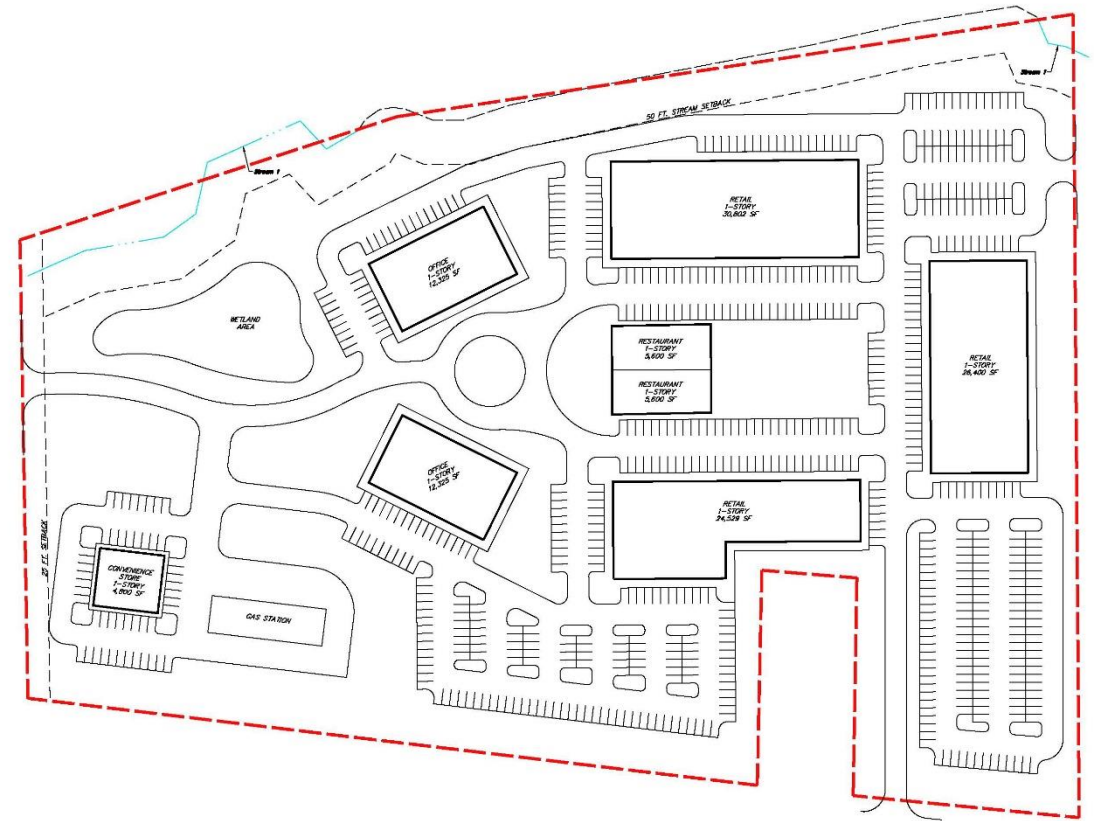
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SUBDIVISION AND LAND DEVELOPMENT ORDINANCES (SALDOs)

SALDO

Article V of the MPC prescribes for subdivision and land development ordinances the basic process and time frame that must be followed in a submission, review, and decision on a subdivision or land development plan and any public improvements to be constructed.



SALDOs give municipalities the power to regulate

- > That **site layout and arrangement** conforms to the comprehensive plan, regulation, and maps
- > That **streets** within the development and bordering it are of sufficient widths, grades and locations to make sure they can accommodate anticipated traffic and facilitate fire protection
- > That adequate **easements and right-of-way** are set aside for drainage and utilities

SALDOs give municipalities the power to regulate

- > That **land subject to flooding, subsidence, or underground fires** is made safe for the proposed purpose or will be set aside for uses that do not endanger life or property (or increase the existing menace)
- > That **streets, walkways, curbs, gutters, street lights, fire hydrants, water and sewage facilities** are designed according to standard
- > That municipalities receive **compensation for the time it takes to review and approve** their applications and for any public improvements that will be necessary due to the impacts of the development.

SALDOs obligate municipalities to:

- > Ensure they review development applications in a timely manner
- > Make decisions in a fair, predictable and consistent way
- > Be flexible about requirements when warranted (via conditional uses, special exceptions, and modifications)

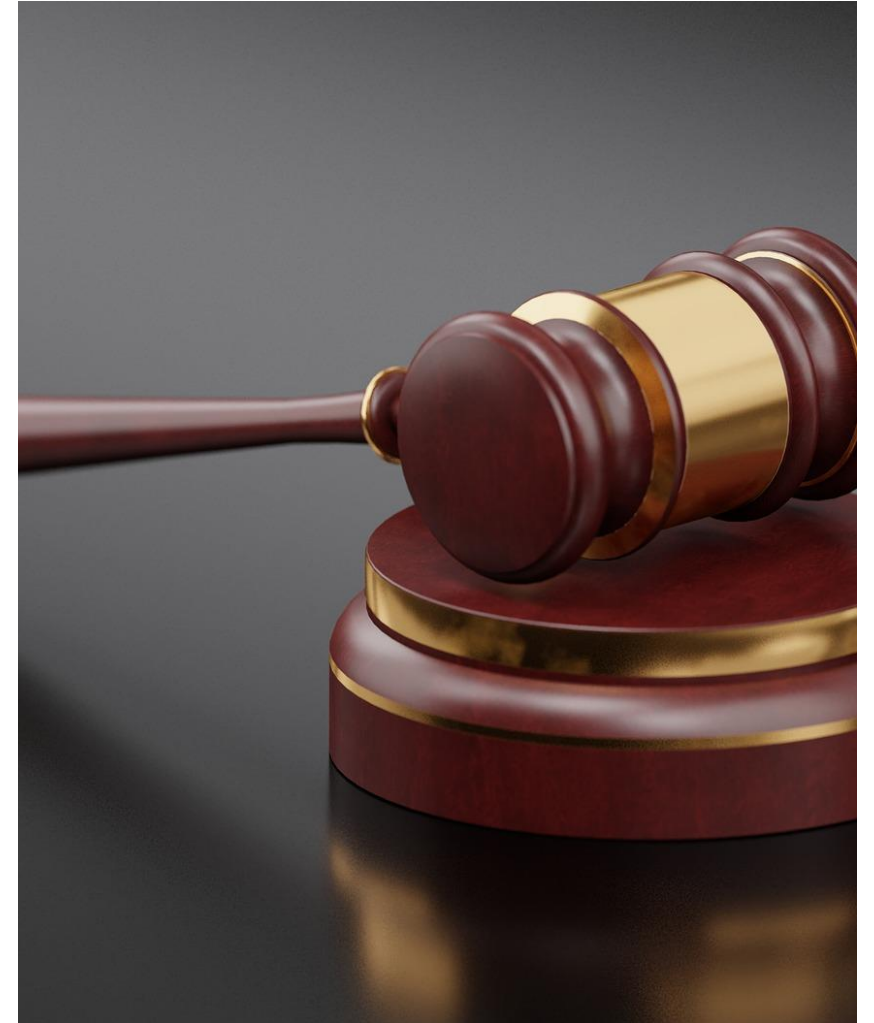


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SALDO Process & Procedures



COMPLETENESS REVIEW:

- > A municipality may adopt procedures for determining whether an application is complete upon submittal. This completeness review assesses whether the information required by the municipal subdivision and land development ordinance has been provided with the submittal.
 - An application determined to be **administratively incomplete** would be returned to the applicant;
 - The applicant should be **informed in writing** of the deficiencies of the application that render it to be incomplete;
 - The procedural **deadlines in the MPC are not triggered** if the submittal has been determined administratively incomplete.



SALDO Process & Procedures



REVIEW FEES:

- > A municipality may establish review fees including for reimbursement of its professional consultants (engineers, solicitors, etc.). These fees must:
 - Be adopted by the governing body by ordinance or resolution;
 - Be reasonable and in accordance with customary charges for similar services in the community, but in no event shall the fees exceed the rate charged for comparable services to the municipality for services which are not reimbursed.
 - The governing shall submit to the applicant an itemized bill showing work performed, identifying the person performing the services and the time and date spent for each task. [MPC 503 (1) (i)]

SALDO Process & Procedures

REVIEW PERIOD:

- > All applications must be acted on and a decision rendered to the applicant no later than 90 days following the date of the regular meeting of the governing body or planning commission (whichever first reviews the application) next following the date an application is filed, if the regular meeting is more than 30 days after the filing of the application, the 90-day period begins after the 30th day from the date the application was filed with the authorized representative of the municipality. – MPC Section 508
 - The written decision must be delivered no later than 15 days following the issuance of the decision.
 - The Commonwealth Court has held that the 15-day provision applies upon the issuance of the decision.

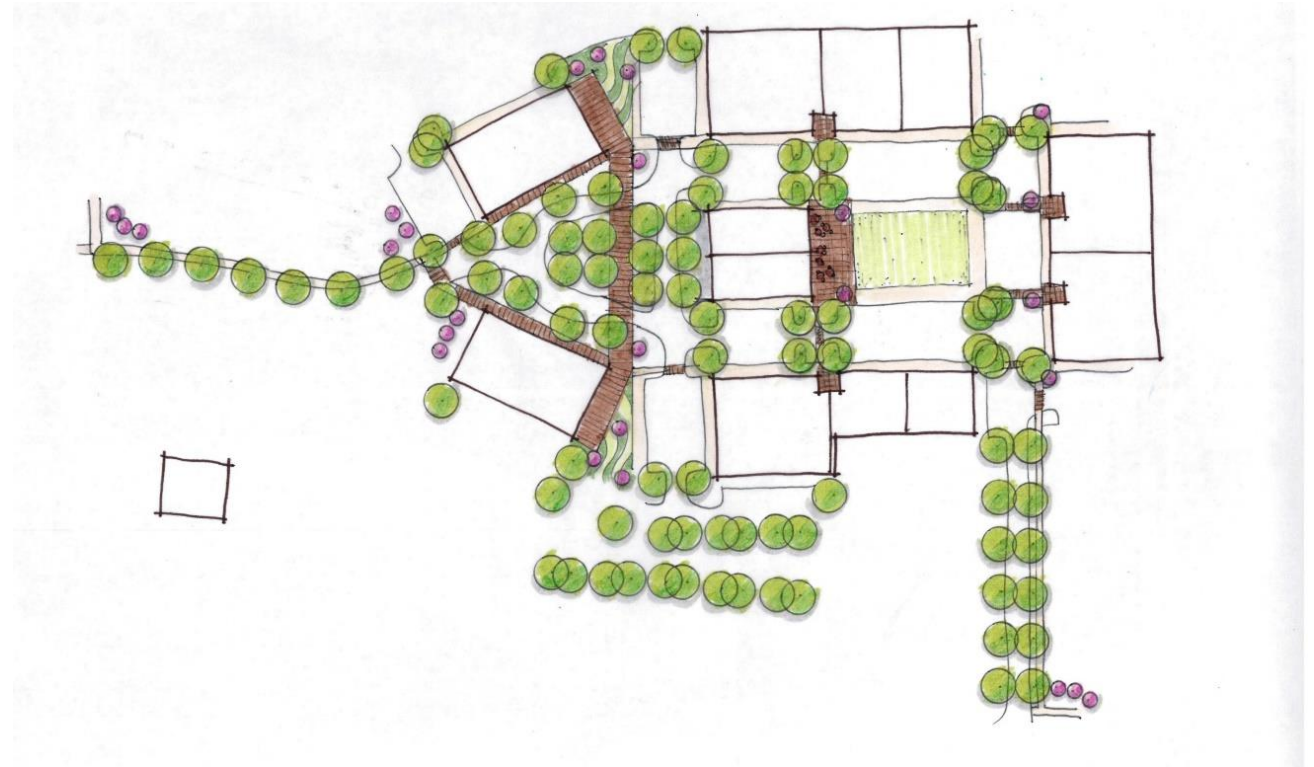
SALDO Process & Procedures

APPLICATION DECISIONS:

- > A public hearing may be held prior to acting on any subdivision or land development plan. A public hearing is not required. MPC Section 508 (5).
- > When disapproving an application, the written decision must specify any defects, describe the requirements that have not been met, and cite sections of the SALDO relied upon for disapproving the application. MPC Section 508 (2).
- > Failure to render and communicate a written decision with the required time and in the manner prescribed constitutes a deemed approval of the application. MPC Section 508 (3).
- > A person aggrieved by a plan that has been deemed approved may file a land use appeal challenging the “deemed approved” plan’s compliance within 30 days.

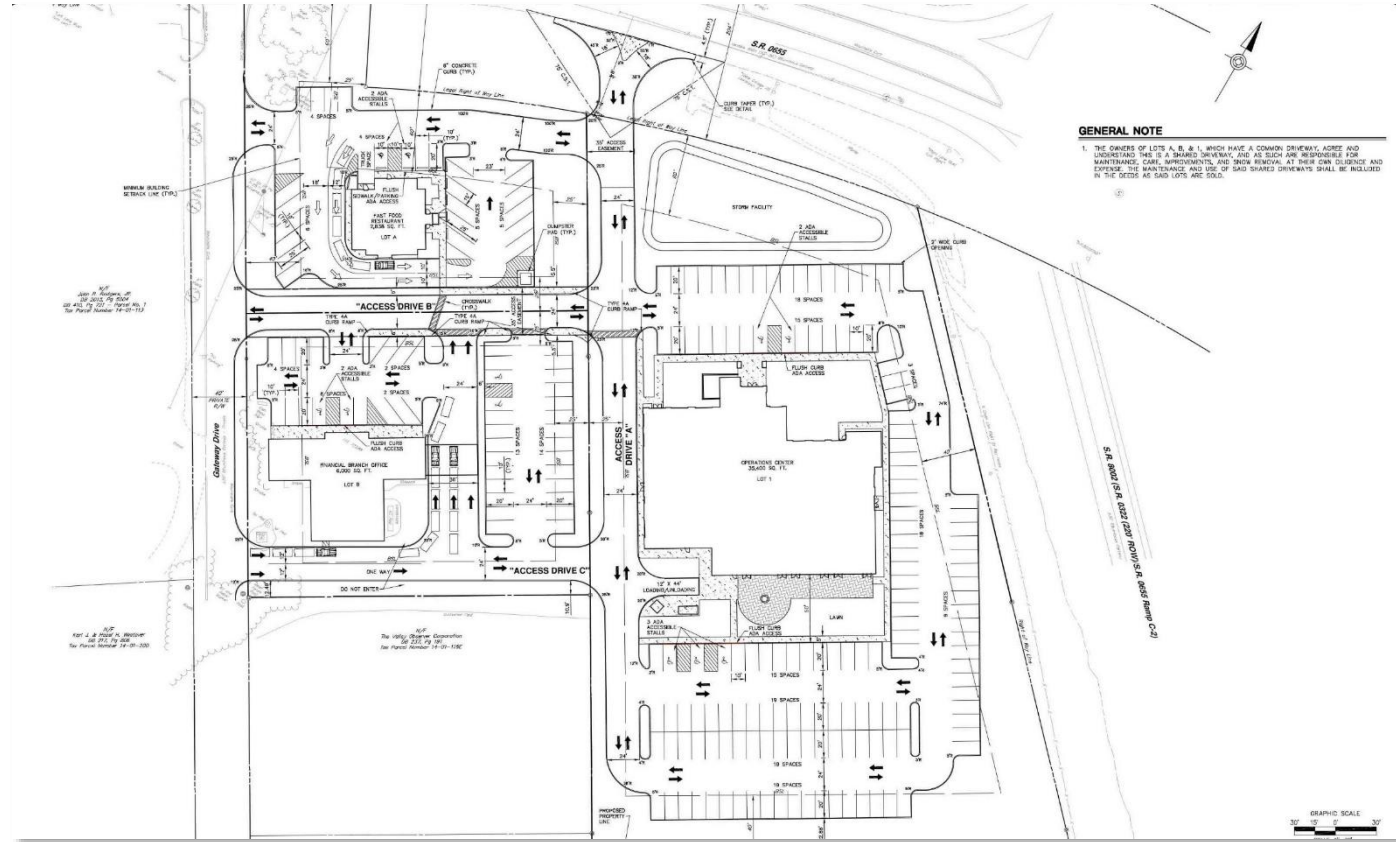
Sketch Plan

If a municipality mandates submission of a sketch plan (i.e. shall, must, etc.), the sketch plan must be processed under the requirements of Section 508 of the MPC and if approved, accords the applicant vested interest in the sketch plan as submitted, same as if it was a preliminary plan.



Preliminary Plans

- > The preliminary plan is perhaps the most important of the plans submitted.
- > Approval of this plan will virtually guarantee approval of the final plan, so long as the final plan is consistent with the approved preliminary plan and otherwise meets the requirements for a final plan. MPC Section 508 (4) (i).



SALDO Process & Procedures



PHASED DEVELOPMENTS:

Upon the approval of a plan OR the completion of the conditions imposed for such approval, the developer must record the final plan within 90 days in the Office of the Recorder of Deeds of the County in which the property is located. (MPC Section 513).

- > A municipality may refuse to issue any permits to further improve any property within the subdivision or land development in violation of the SALDO. (MPC Section 515.1.)
- > Only upon securing final plan approval can the plan be recorded and lot sales and/or development commence.



SALDO Process & Procedures

MODIFICATIONS OR WAIVERS:

Sections 503 (8) and 512.1 of the MPC provide relief from the strict application of a requirement in the form of a modification or waiver.

- > Modification or waiver is not the same thing as and should not be confused with relief granted by a variance from requirements of a zoning ordinance.
- > A modification seeks an adjustment from a requirement, while a waiver seeks release from the requirement.
- > The alternative standard must be equal or better.
- > A modification or waiver request “shall accompany and be part of the application for development.” The request must be in writing and shall state “in full the grounds and facts of unreasonableness or hardship on which the request is based.” MPC Section 512.1

SALDO Process & Procedures

RECORDING OF PLANS:

Section 508 (4) (vi) of the MPC requires that each section or phase in any residential land development or subdivision, except for the last section, contain a minimum of 25% of the total number of dwelling units as depicted on the preliminary plan (unless a lesser percentage is approved by the governing body).

- > Section 508 (5) (vii) of the MPC provides that, where a developer fails to adhere to the initial schedule or an approved modified phasing schedule, the governing body has discretion to subject that section or phase to intervening changes in local regulations.
- > Otherwise, an approved plan is generally protected from regulatory changes for 5 years after the approval.

Regulatory changes after approval

After approval, a land development plan is generally protected from regulatory changes for 5 years from the approval date.

EXCEPTION: when a residential plan is phased and the developer fails to adhere to the initial schedule or an approved modified phasing schedule. In that case, the governing body has discretion to subject that section or phase to intervening changes in local regulation.

MPC Section 508 (4) (vi) requires that each section of phase in a residential subdivision or land development plan (except for the last section) contain a minimum of 25% of the total number of dwelling units, as depicted on the preliminary plan (unless a lesser percentage is approved by the governing body)



FINANCIAL SECURITY FOR IMPROVEMENTS

Financial Security

Municipalities that fail to obtain financial security from the applicant/developer for construction of required improvements could be financially responsible for completing improvements not completed by the developer through the expenditure of public funds.

– Section 509 of the MPC

Financial Security



REQUIREMENTS:

- > Section 509 of the MPC mandates that a municipality not approve a final subdivision or land development plan unless required public improvements are completed OR completion is assured by financial security provided by the developer and available for use by the municipality to complete the required improvements.
- > A developer is not required to provide financial security to a municipality for any improvement bonded with PennDOT or any other public utility.
- > The developer's engineer prepares and submits the sealed cost estimate for the improvements and the municipal engineer reviews and accepts the cost estimate.

Financial Security

REQUIREMENTS (Continued):

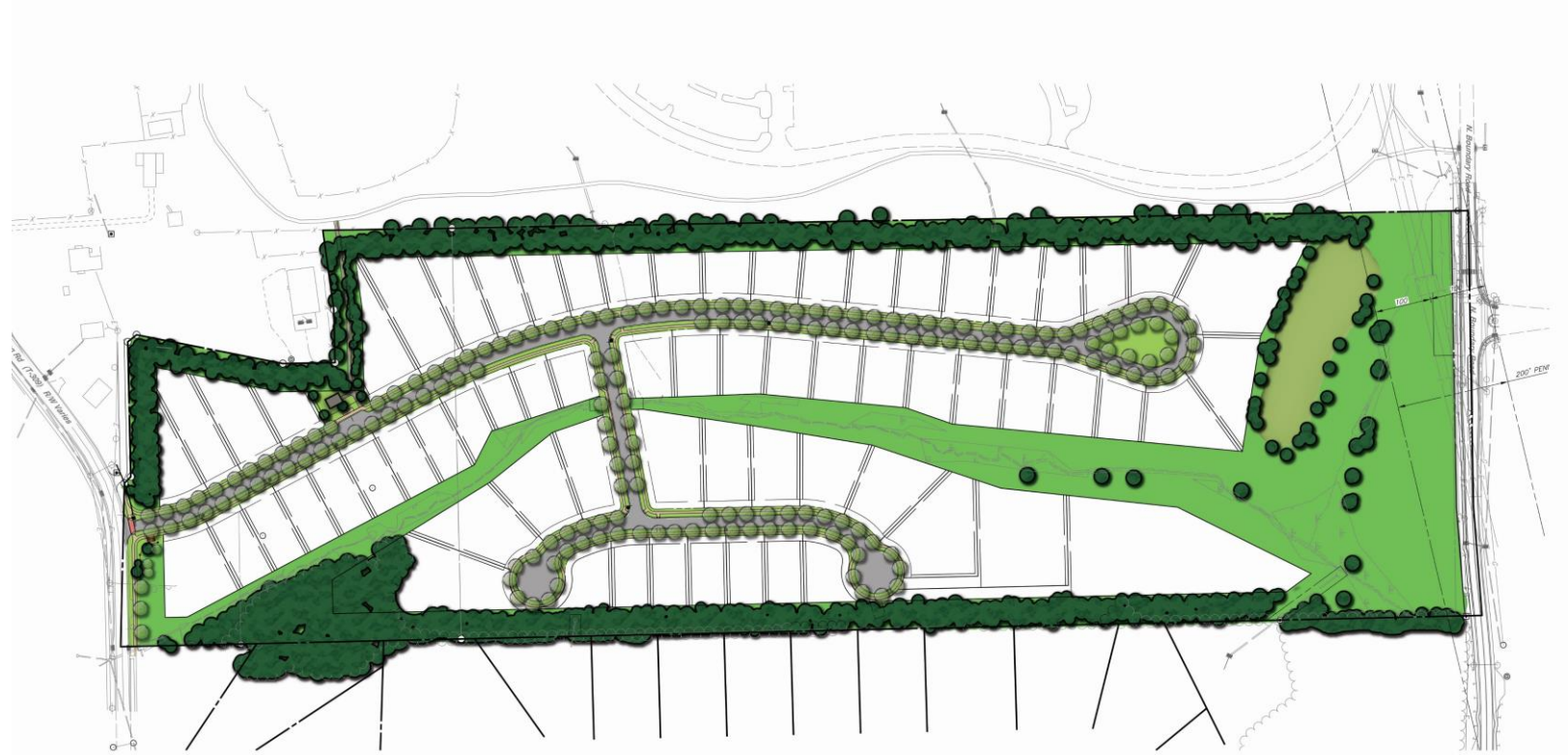
On occasion, a more cautious lender will not provide financial guarantees until presented with a signed final subdivision plan or land development plan.

- > Section 509 (b) of the MPC permits a developer to request a signed copy of a municipal resolution or letter indicating approval of the final plat contingent upon the developer obtaining a satisfactory financial security.
- > The resolution or contingent approval expires and is deemed to be revoked if the financial security is not executed within 90 days, unless a written extension is granted.

Financial Security & Permitting

When financial security is provided in lieu of completion of required improvements, the MPC specifically requires building (and any other relevant) permits be issued for the lots in the subdivision.

- Section 509 (m) of the MPC



Financial Security

REQUIREMENTS (Continued):

- > The amount of financial security required of the developer should equal 110% of the estimated cost of the improvements.
- > The municipality is also allowed to adjust the amount of security annually based on actual cost of completed improvements in comparison to scheduled completion dates and thus may require posting of additional security over time to assure it equals 110% of the cost of completion of any remaining required improvements.

Financial Security

PARTIAL RELEASE OF FINANCIAL SECURITY:

- > A developer may ask for a partial release of the financial security for completed required improvements:
 - Upon receipt of a written request, the municipality has 45 days to have its municipal engineer certify that work on the improvements was completed according to final plan approval.
 - Within 15 days of receipt of the municipal engineer's reports, the governing body must provide written notification as to its decision regarding partial release of the developer's financial security.

Financial Security



RELEASE AND MAINTENANCE BONDS:

Where the municipality accepts dedication of improvements, it may require posting of additional financial security to secure the structural integrity of the constructed improvements subject to the design and specifications depicted on the final plan.

- > Such financial security can be held for a period of only 18 months and may not exceed 15% of the actual cost of constructing the improvements.
- > Regardless of when the improvements are constructed, the municipality should establish an inspection procedure to carefully monitor progress of the construction of improvements. The municipality is authorized to charge the applicant / developer for the costs incurred by the municipality for inspection of the improvements.



STORMWATER MANAGEMENT REQUIREMENTS WITH SALDO'S

Stormwater Ordinances in SALDO

Stormwater in the SALDO or Stand-Alone Ordinance:

- > Historically stormwater requirements have been included in a municipal SALDO:
 - Older ordinances only require rate control for stormwater management
 - Many ordinances silent regarding operation and maintenance agreements
 - SALDO stormwater requirements are typically out of date with current stormwater regulations

Stormwater Ordinances in SALDO

Benefits of a Stand-Alone Ordinance:

- > Projects are not classified under Subdivision and Land Development can still apply for Stormwater Regulations:
 - Separate Development Agreements
 - Stormwater Specific Operation and Maintenance Agreements.
 - Stormwater Specific Financial Security
- > Separate Stormwater Ordinances Required for MS4 Compliance
- > Easier to Update as Stormwater Regulations Change



PROPER SALDO APPLICATION BEST PRACTICES

Adoption, Amendments, & Repeals

A governing body can take legislative action to adopt, amend, or repeal a land use ordinance at any time, provided the following occur:

- > Proper Notice to the Public
- > Required Review by the County Planning Agency
- > Adherence to all Procedures as Prescribed in the MPC



Ordinance Amendments

- > Typically, ordinance amendments can be put together and written by municipal staff and the Planning Commission members with input from municipal consultants such as the retained Engineer or municipal Solicitor
- > Planning Commission reviews the ordinance amendment and makes a recommendation to the Governing Body to approve

TOWNSHIP OF NORTH FAYETTE
ORDINANCE NO. 463

AN ORDINANCE OF THE TOWNSHIP OF NORTH FAYETTE, ALLEGHENY COUNTY, PENNSYLVANIA, AMENDING ITS ZONING ORDINANCE REGARDING THE KEEPING OF CHICKENS, DUCKS, AND BEES IN RESIDENTIAL ZONING DISTRICTS AND ADDING ASSOCIATED DEFINITIONS.

WHEREAS, as authorized by the Pennsylvania Municipalities Planning Code (MPC), the Board of Supervisors of the Township of North Fayette regulates land use and zoning within the Township through its comprehensive Zoning Ordinance, currently codified as Chapter 27 of the Township Code of Ordinances, Ordinance No. 418, as amended;

WHEREAS, upon the recommendation of its Community Development Director and Planning Commission, the Township Board of Supervisors wishes to amend various provisions of its Zoning Ordinance, as follows: amend Part 4 to add new sections 27-405, 27-406, and 27-407; and, secondly, amend Section 27-1402 to add the following definitions: Africanized Honeybee, Apiary, Bee, Beekeeper, Chickens, Chicken Coop, Colony, Flyway Barrier, Hive, and Rooster.

WHEREAS, the Township has, in accordance with the requirements of the MPC, submitted the proposed amendments to its Planning Commission, which gave its recommendations regarding the proposed amendments at a duly noticed public meeting;

WHEREAS, on November 13, 2018, the Township Board of Supervisors held a duly noticed, advertised, and posted public hearing to take public comment on the proposed zoning ordinance text amendments; and

WHEREAS, the Township Board of Supervisors, having received such public comment as may have been given at the Public Hearings, and having received the recommendations of the Township's Planning Commission and Community Development Director, finds that enactment of the proposed zoning amendments will be beneficial to the health, safety, and welfare of the Township and consistent with the PA MPC.

NOW THEREFORE, be it Ordained and Enacted by the Township of North Fayette Board of Supervisors, and it is hereby Ordained and Enacted by authority of same, as follows:

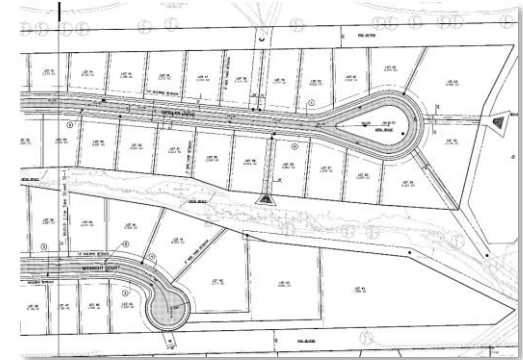
TIPS - SALDO Process & Procedures

- > Offer a **pre-application meeting/conference** for applicants to meet with municipal planning staff, the engineer, and the solicitor
- > Provide a **checklist** along with the application that applicants can use to review prior to submittal (this checklist is commonly outlined in the SALDO itself)
- > Clearly list the required **application fees** within the application package
- > Maintain open lines of **communication and offer transparency** – really these are the keys to a healthy relationship between the municipality and the developer/applicant
- > If an extension is being requested by the applicant, get it **in writing!** Paperwork is important.



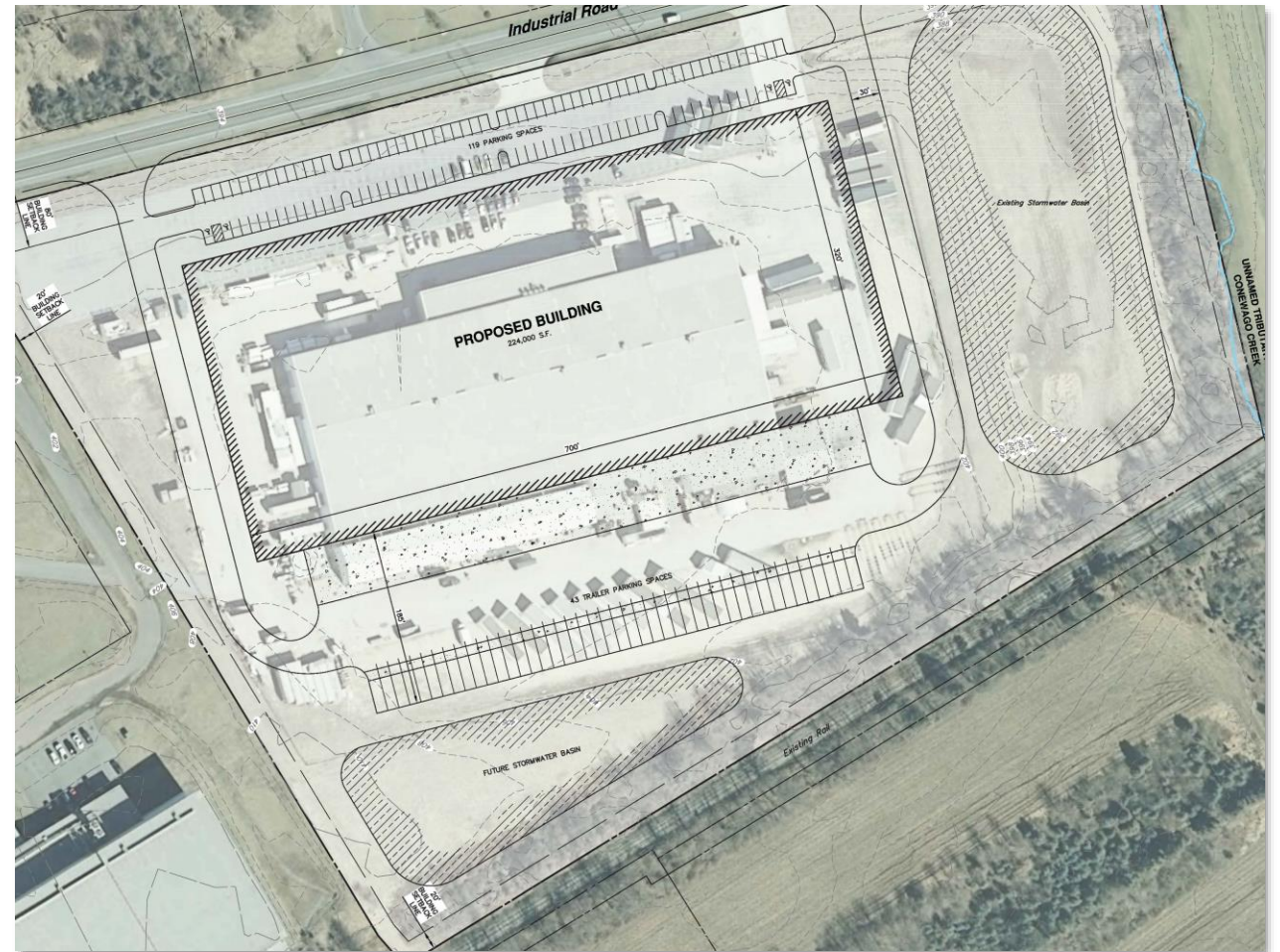
TIPS - SALDO Process & Procedures

- > Try to avoid deemed approvals and confusion on deadlines and next steps in the process
- > REAL LIFE EXAMPLE Lessons Learned:
 - Need to know when the clock starts – note it and keep track
 - Get everything in writing and keep good records of letters sent, approvals, county notifications, outstanding items, etc.
 - Want to avoid confusion on next steps, meeting dates, agendas, etc.
 - Pre-application conferences are beneficial to all (a draft site plan or conceptual plan is all that is needed!)



Use Approvals vs. Land Development Approvals

Land Development approval does not grant use approvals under the Zoning Ordinance.

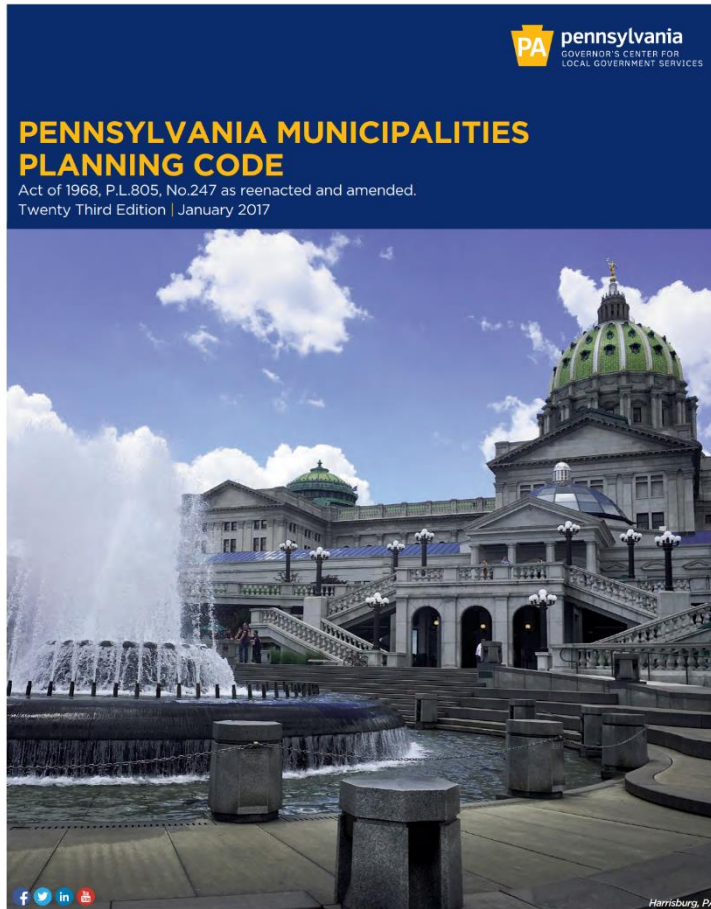


TIPS – Financial Security

- > Have a set process and procedures in place for use with the review of bond reduction or bond release requests submitted by the developer or contractor
- > REAL LIFE EXAMPLE Lessons Learned:
 - Require itemized lists with percent completes based on original cost estimate for improvements
 - Make sure the bond reduction request is in writing!
 - Don't accept general request for reduction – get more information – otherwise it is a waste of your time!



Helpful Links & Resources



Commonwealth of Pennsylvania
PA Department of Community & Economic Development | dced.pa.gov

Link to download the PA MPC Online:

<https://dced.pa.gov/download/pennsylvania-municipalities-planning-code-act-247-of-1968/>

Other DCED Resources:

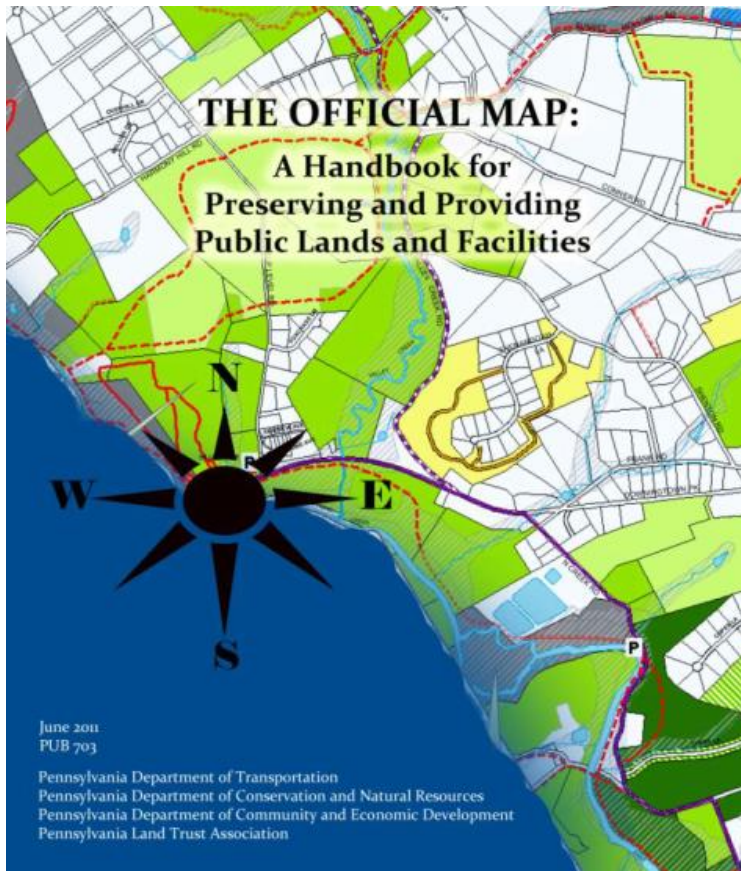
<https://dced.pa.gov/housing-and-development/community-planning/>

<https://dced.pa.gov/local-government/>

LGA:

<https://localgovernmentacademy.org/>

Helpful Links & Resources



Official Maps – Conservation Tools:

https://conservationtools.org/library_items/931

PMPEI:

<https://pmpei.org/>

PA APA:

<https://planningpa.org/>

National APA:

<https://www.planning.org/>

Questions?



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The Water Resource Center (WRC) Southwestern Pennsylvania Commission is dedicated to promoting regional collaboration on water topics; facilitating coordination and education; and providing technical assistance to its member governments. WRC provides support to federal, state, regional, and local organizations, counties, cities, and municipalities on various water resource management initiatives.

The WRC works to continue providing educational programs to the region. If you have ideas for needed training please contact the WRC at spcwater.org

