LVPC
Lehigh Valley Planning Commission
planning for the new normal.

Tuesday, November 30, 2021
Lehigh Valley General Assembly Meeting
Virtual Meeting Protocol

We wish to support the public dialogue throughout this virtual meeting and have established protocols to allow this to occur efficiently and effectively:

- All participants will be muted during the presentation portions of the agenda. If you are joining us via a computer or a smart device, you can mute and unmute yourself by pressing the microphone icon. If you are dialing in to the meeting using the call-in number, please use *6 to mute and unmute yourself.

- All meeting participants are encouraged to utilize the virtual meeting chat tool online throughout.

- Voting members who wish to speak will need to say your name before you speak, this includes:
  - Discussion
  - Questions

- Any participants who wish to speak will need to say your name before you add to the meeting.

- Minutes of this meeting are being taken via recording.

- The Agenda and meeting materials are available at lvpc.org/general-assembly.html.
Meeting Agenda

• Welcome and Roll Call
• Courtesy of Floor
• Pennsylvania Municipalities Planning Code, Emerging Land Uses and Law Update
  • Municipalities Planning Code Issues and Coordinated Advocacy Effort
  • Emerging Land Uses
  • Land Use Law and Recent Court Decisions
  • Growth Management and the Planning Process
• Public Engagement and Participation
Who’s Participating

1. Roll Call
2. Members of the Public Present
   Please state your name for the record

- Mute and unmute your phone by pressing *6
Courtesy of the Floor

Any member of the public who wishes to speak:

1. On agenda items:
   Hold your comments for a bit… When public comment is called on the specific agenda item you wish to discuss, announce yourself and provide input.

2. On non-agenda items:
   Please speak now… Announce yourself and the subject you wish to discuss.

3. All items:
   Again, you can use the box throughout the meeting.

- Mute and unmute your phone by pressing *6
Pennsylvania Municipalities Planning Code

Municipalities Planning Code Issues and Coordinated Advocacy Effort
Plan Activity

Lehigh County
- Reviews: 32
- Acres: 270.5
- Residential: 7
- Non-Residential: 1
- Stormwater Management: 7
- Subdivisions and Lot Line Adjustments: 9

Northampton County
- Reviews: 40
- Acres: 673.2
- Residential: 12
- Non-Residential: 1
- Stormwater Management: 11
- Subdivisions and Lot Line Adjustments: 7
- Municipal Ordinances and Maps: 9

Regional Totals*
- 20 Subdivision/Lot Line Adjustments
- 31 Development
- 19 Stormwater Management
- 2 Municipal Ordinances and Maps
- 943.7 Acres

* Includes preliminary and final plans
Types of New Development

Housing: 503 Total Units

- Single-Family Detached: 165
- Townhouses: 14
- Apartments: 304
- Planned Residential: 0
- Twins: 20
- Assisted-Living: 0
- Manufactured Homes: 0
- Condos: 0

Non-Residential: 3,247,588 Total Square Feet

- Commercial: 50,676
- Retail: 2,700
- Public/Quasi-Public: 4,575
- Industrial (Warehouse)*: 3,100,014 (W: 2,856,264)
- Office: 0
- Transportation: 89,623
- Agriculture: 0
- Recreational: 0

* Warehouse number is a subset of industrial total square footage
Pennsylvania Municipalities Planning Code is Unable to Ensure the Communities’ Goals

Goal 1 – Efficient and Coordinated Development Pattern

- **Policy 1.1** - Preserve natural areas and farmland by managing growth, and development to enhance and strengthen cities, boroughs, suburbs and rural communities.

- **Actions**
  - Guide and location and intensity of development.
  - Encourage reuse and redevelopment within urban areas.
  - Increase the social, economic and environmental well-being of the region.
  - Match development intensity with sustainable infrastructure capacity.
  - Improve the utility and mobility infrastructure of the region.
  - Provide transportation options that are cost-effective and sustainable.
  - Preserve agricultural and natural lands.
  - Integrate efficiency measures and emerging technologies.
  - Support evolution and adaptability of government

- Organize and advocate for changes to the Pennsylvania Municipalities Planning Code that support regional and municipal planning.
Pennsylvania Municipalities Planning Code Changes
Platform Development

- Communities being required to zone for all uses unless in a multi-municipal comprehensive plan and the joint zoning requirements are met. Curative amendment exposure generally that is costly and difficult for communities.
- Overly complicated, burdensome and inflexible requirements to adopt transportation impact fees and to expend fees once required planning is complete.
- Limits of timing, interaction and enforceability between the subdivision and land development ordinance, zoning and comprehensive planning provisions, the three major pillars of community planning and management.
- Need for specific provisions that coordinate infrastructure, beyond wastewater, capital planning and budgets, to the zoning appeals and subdivision and land development approvals process.
- Need to able to establish new types of impact statement requirements and fees to manage and offset the impacts of development.
- Structure of the approvals timing regulations to allow for communities and counties to act only if a facility end user is known so true impacts may be assessed in the decision-making process.
- Requirements for the coordination by developers with all review and regulatory agencies versus the current system of piecemeal and uncoordinated process that allows a developer to pit agencies like the Pennsylvania Department of Transportation against a local government.
- Expansion of zones of impact, that allow communities, counties and the Commonwealth to require maintenance, extensions and improvements to infrastructure beyond the area immediately around a development site.
- Allow impacts across municipal boundaries and associated needs to be accounted for and addressed.
Pennsylvania Municipalities Planning Code

Working Group

Agenda:

• Outline Changes to the MPC
  • Identify Areas Where Local Governments Need Support in Sharpening the Tools They Have Now
• Develop Single Legislative Platform for All Levels and Types of Governments
  • Develop an Educational Strategy to Support Better Decision-Making
• Develop Advocacy Strategy
• Advocate for Change
Pennsylvania Municipalities Planning Code Changes Effort

• Reality Check
  • This is a loooooong game
    • We have no authority to make these changes and have to utilize our power of influence *wisely and statewide*
    • No major changes in 20 years and even those weren’t anything near what we are discussing regionally
    • Massive fear that the development community will use this opportunity to undo what we have now; Legislators are already talking about it
    • A lot of regions are desperate for anything and think we are whiners and should enjoy our embarrassment of riches
    • Commonwealth agencies are actively promoting growth here and elected leadership is taking a victory lap when convenient and at the Lehigh Valley’s expense because we are one of the only truly growing areas in the state
    • There is no consensus between the planning and transportation leadership in the region and the economic development community…in fact, we are increasingly at odds on industrial growth matters
Pennsylvania Municipalities Planning Code Changes Effort

• At A Minimum, Through This Effort We Will:
  • Build the knowledge and capacity of the counties, local governments, state legislators and the public --- THIS IS WORTH IT NO MATTER WHAT!
  • Regardless of how uncomfortable this effort will advance key issues:
    • Put Commonwealth agencies and state officials on notice of what the community expects and demands of them
      • Shifts the power dynamic into an accountability dynamic
    • Forces the issue of common priorities and expectations regionwide and requires the economic development community to comply
      • Economic development community receives millions of taxpayer dollars and should be held to the level of accountability of governmental entities as a result of public funding
    • Put the development, engineering, legal, and banking sectors on notice that the people will not stand for poorly located, conceived, designed, built and maintained developments that increase taxpayer burden, decrease livability and sustainability, further inequities and destroy our environment and/or quality of life.
Pennsylvania Municipalities Planning Code
Working Group

TIMELINE
• By December 31, 2021
  • Up to Three Working Group Meetings
  • Accomplish Goal of a Single Platform and Advocacy Strategy
• After January 1, 2022
  • Begin Advocacy

NEXT MEETING
Friday, December 3rd at 2 PM
• In-person at the LVPC, 961 Marcon Blvd, Suite 310, Allentown
• Masks Required
Emerging Land Uses
Pennsylvania Cities, Towns Prepare for 5G Deployments

A recently signed state law provides a framework for deploying “small wireless facilities” — the infrastructure that supports 4G and 5G. That includes where the devices can go, and how much control local governments have.
Calpine Corporation owns and manages Vineland Solar One, a 4-megawatt array that provides power to nearly 500 residents of Vineland, NJ, through a partnership with Vineland Municipal Electric Utility and Landis Sewerage Authority.
Solar Farm Municipal Considerations

- Financing
- Insurance
- Connections
- Pennsylvania Natural Diversity Inventory (PNDI) and Cultural Resource Notice (CRN)
- Stormwater
- Fencing
- Viewshed/Glare
- Tree Replacement
- Construction Standards
- Land Use and Community Planning Goals
- Solar as a Community Resource
Freight Facilities
TOTAL VEHICLE TRAFFIC

- State Route 33 between Newburg Road and State Route 248 (Northampton County)
- Interstate-78 just east of the State Route 309 exit (Lehigh County)
- Interstate-78 just east of State Route 33 exit (Northampton County)
- State Route 309 just south of State Route 378 (Lehigh County)

Data for March 3, 2020: 66,413
Data for March 5, 2021: 77,192
Data for October 5, 2021: 75,959
Data for October 26, 2021: 57,629
Data for October 5, 2021: 63,972
Data for October 5, 2021: 36,173
The Conversation

- managing the transportation-land use connection
- monitoring future development, redevelopment and connections to existing developed areas
- supporting greener development including infrastructure for better resiliency
- preparing for next generation freight
- supporting local governments as they navigate the timing and intensity of industrial development while balancing the global needs of the community, counties and region
- General industrial zones have challenges --- manufacturers need space --- 300 sq ft k or less is needed; where? Could this be grown?
- Cold storage needed (pharma; food) and it’s ability to be distributed
- E-commerce is consumer driven; good for jobs; transition timing for automation?
- Every industry is clamoring for workers; land use is important because of context and cause and effects
- Multimodal connections and facilities and where does freight go /where does it come from; what are those connections? Need to understand commodity flows better; what does PENNDOT have? Anything beyond what PENNDOT that we could get?
- What facilities rely on air cargo? Where customers/potential customers at?
- Big data is a strong focus for PENNDOT. What could they do to support us? Data Partnerships opportunities with the Department
- Could we overlay transportation conditions info that PENNDOT has?
- Can we make the traffic impact studies for stringent? Additional conditions, more thorough TIS? At what are the limits to improvements? Are we hamstringing in any way?
- Industrial park redevelopment…new challenge. It can reduce needed small industrial spaces.
- We could us space between 50K and 100K sqf for industrial. Are their partnership opportunities to accommodate this? Similar to what LVIP has done in the past.
- WIB and LVPC Partnership is important; where we know where are coming from we can know where to go
- We need your data; We need WIBs
- Equity analysis is important to WIB and LANTA, have used it
- If start looking at scenarios for transit re-routing/expansion equity and work locations data is important; can be a primary consideration for prioritization
- Trying to get people from residence to areas outside equity communities is important; disconnect between where people live and where the jobs are
- Increase in Spanish speaking population and adjusting to meeting communication needs
- Over 50% (50%-55% to work; 10%-15% to school) of LANTA riders are workers getting to work (school)
- Can we use analysis to support getting people to jobs more easily? Easy to use for employers, WIB, LVEDC, others?
- Where could the next LVIP Park be? Possible to figure that out?
- Peak demand is an infrastructure challenge and benefit
- Infrastructure beyond transportation is important; sewer and water need tremendous investment in certain locations; include other infrastructure in the conversation; add broadband and stormwater
- Municipal, county, state and federal budgets for infrastructure are challenged
- Municipal capacity can be limited
- Municipal regulatory authorities can be a challenge to great plan, others communities, state and other government budgets
- Line up projects that are being supported…could help with decision-making by funders/target resources
- Quality job creation and incentives for those quality jobs
EPFA Multi-Region Freight Plan

- When crafting the Statewide Freight Plan, what items/issues were found to be key focus points?
  - Other ideas for key focus areas?
- Are there key data points we should focus on?
- What performance metrics are important to incorporate?
- What freight trends/future forces should be discussed?
- What do you see as the roll of the LVTS Technical Committee as the planning group for the MPO?
  WorkshopLV: Freight? Others?
- Other thoughts, ideas, suggestions?...
Land Use Law and Recent Court Decisions
Draft

Community Guidance

Personal Shooting Ranges
Barris v. Stroud Township

What Happened?

• Jonathan Barris took Stroud Township (Monroe County) to Court over a 2012-2013 zoning permit application denial for a personal shooting range, on the basis that the denial is a violation of the US Constitution’s Second Amendment.

• After moving through the county court system, on May 28th, 2021 the Commonwealth Court determined that “the challenged law imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee.”

• The Court ruled that the Township did not meet its burden under the intermediate scrutiny standard to justify such an outright ban on personal shooting ranges at one’s residence, because it did not establish that the Ordinance “does not burden more conduct than is reasonably necessary.”
Barris v. Stroud Township

What does this mean for local governments?

• While the Court’s decision was not directly related to a zoning petition, rather it was based on violation of the Second Amendment, implications of the decision will result in changes to Stroud Township’s Zoning Ordinance or otherwise will likely subject the zoning ordinance to a validity challenge. Municipal governments in the Lehigh Valley – and throughout the Commonwealth – should consider whether a similar situation is applicable locally and, if so, how to prevent legal scrutiny on the matter.

• The Commonwealth Court’s decision did not prohibit the regulation of personal shooting ranges, rather the Court upheld the right to firearms practice on personal property. Further, the Court did not find that every property is capable of accommodating a personal shooting range.
Barris v. Stroud Township

Some things to think about…

• How this matter is handled will likely vary depending on the condition – urban, suburban, exurban rural or combinations thereof. Because lot widths, density and even topography vary, solutions to regulating effectively will vary by community and potentially by neighborhood.

• A municipality’s class (e.g. Third Class City, Second Class Township, etc.) determines potential land use and community impacts and the power to regulate, which should be considered regarding firearm discharge regulation.

• Utilize special exceptions or conditional uses to allow for adequate examination of a proposal’s appropriateness and safety provisions:
  • Indoor or outdoor range?
  • Personal range or business/club range?
  • Environmental impacts?
  • Use Standards?
Other Pennsylvania Land Use Case
Law 2020-2021
Marshall v. East Bradford Township Board of Supervisors

What Happened?

• John and Dara-Gans Marshall are the landowners of a property containing a house and barn in the R-2 Zoning District in Bradford Township (Chester County). The property owners submitted a conditional use application to use the property as a “bed and breakfast estate”. The house itself did not have sufficient common space to meet the use requirements, so the application identified the barn as a useable area to meet the requirements of the ordinance.

• The Township denied the application on the grounds that a bed and breakfast has to be owner-occupied, and while the house serves as the principal structure occupied by the owners, the barn is accessory to the principal use.

• After moving through the court system, on February 17th, 2021 the Commonwealth Court found that the barn is owner-occupied and not accessory to the house. “The Township’s zoning ordinance does not limit a tract of land in the R-2 Zoning District to one principal structure. Such an interpretation is inconsistent with the agricultural use permitted in the R-2 Zoning District, which allows use of a corncrib, a barn and various outbuildings, none of which is subordinate to the other.”

• The zoning ordinance also does not limit a bed and breakfast common area to the owner’s dwelling.
Growth Management and the Planning Process
What submissions go to the LVPC for review, and when?
What to send to the LVPC, and when?

Subdivision and Land Development

Important MPC Definitions (Section 107):

**Subdivision**
- Division or redivision of land into 2 or more lots
- Includes changes in existing lot lines

**Land Development**
- Lot improvement involving 2 or more residential buildings
- One or more nonresidential buildings
- Division/allocation of land or space for streets, common areas, leaseholds, etc.
## What to send to the LVPC, and when?

### Subdivision and Land Development

<table>
<thead>
<tr>
<th>Phase</th>
<th>Why send to LVPC?</th>
<th>Submit to LVPC...</th>
<th>Review Timeframe</th>
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<tbody>
<tr>
<td>Sketch Plan</td>
<td>Additional input and considerations; Receive support and leverage from LVPC in discussions/ negotiations with the developer</td>
<td>... Upon receipt of a sketch plan application, ONLY if the municipal SALDO requires LVPC review of sketch plans.</td>
<td>30 days from the date a submission is accepted</td>
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<td>Preliminary Plan</td>
<td><strong>MPC Requirement, Section 502(b);</strong>&lt;br&gt;Stormwater management design review;&lt;br&gt;Sound and practical guidance;&lt;br&gt;Receive support and leverage from LVPC;&lt;br&gt;Free review of transportation studies</td>
<td>… Upon receipt of a subdivision or land development application, including transportation studies (or others).&lt;br&gt;… If a proposal substantially changes after LVPC has reviewed it.&lt;br&gt;… if a proposal involves 10,000 square feet or more of new impervious surfaces.</td>
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<td>30 days from the date a submission is accepted</td>
</tr>
<tr>
<td>Final Plan</td>
<td>MPC Requirement, Section 513(a); Confirm LVPC has reviewed proposal</td>
<td>... after municipal approval signatures have been obtained on the plans, and prior to being brought to the County Recorder of Deeds.</td>
<td>3-5 business days</td>
</tr>
</tbody>
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What to send to the LVPC, and when?
Documents and Legislation

<table>
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<th>Submit to LVPC…</th>
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<tbody>
<tr>
<td>301.3</td>
<td>Comprehensive Plan and Amendments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>304</td>
<td>Public facilities, including:</td>
<td>... at least 45 days prior to the public hearing by local governing body.</td>
<td>45 day review</td>
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<td></td>
<td>- Streets: vacations, opening, widening, etc.</td>
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<tr>
<td></td>
<td>- Public structures: erection, demolition, sale</td>
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<td></td>
<td>- Water/sewer lines, sewer treatment facility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>305</td>
<td>School facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>408</td>
<td>Official Map</td>
<td></td>
<td></td>
</tr>
<tr>
<td>504</td>
<td>Subdivision and Land Development Ordinance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>607</td>
<td>Zoning Ordinance and Map</td>
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<td>504.A</td>
<td>Transportation Capital Improvements Plan: Land Use Assumptions Report</td>
<td>... at least 30 days prior to the public hearing by local governing body.</td>
<td>30 day review</td>
</tr>
<tr>
<td>505</td>
<td>Subdivision and Land Development Ordinance Amendment</td>
<td></td>
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<tr>
<td>609</td>
<td>Zoning Ordinance Amendment</td>
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<td>609</td>
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<td>609.1</td>
<td>Curative Amendments</td>
<td>… upon receipt.</td>
<td>Prior to the scheduled hearing</td>
</tr>
<tr>
<td>505</td>
<td>All adopted documents or legislation</td>
<td>… within 30 days after adoption.</td>
<td>N/A</td>
</tr>
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</table>
Municipal and Multi-Municipal Planning

collaborative ecosystem

@gapingvoid
Did you know?

• Working on a new municipal training on the common zoning validity challenges and methods for improving defensibility
  • Municipalities are required by the MPC to provide for all land uses within their corporate boundaries. This includes all housing, commercial, and industrial uses. Municipalities cannot exclude particular land uses from their community. All land uses must be accommodated somewhere in a municipality (e.g. industrial, landfills, cell phone towers, adult uses, and penal institutions). Not providing for a particular land use can result in a zoning validity challenge, such as a claim that the zoning ordinance is exclusionary.
  • Municipalities are not required to provide for all land uses within their corporate boundaries if they participate in a multi-municipal plan. This exemption is provided in Section 1103 (4) of the MPC, which reads as follows:

  • ‘Plan for the accommodation of all categories of uses within the area of the plan, provided, however, that all uses need not be provided in every municipality, but shall be planned and provided for within a reasonable geographic area of the plan.’

Based upon this section of the MPC, municipalities that participate in a multi-municipal comprehensive plan, like the Centre Region Comprehensive Plan, can rely upon land uses being provided within other municipalities that also participate in the multi-municipal comprehensive plan.
LEHIGH VALLEY GOVERNMENT ACADEMY 2022

Community Planning
Zoning
Avoiding Common Zoning Validity Challenges
Zoning Administration
Subdivision and Land Development

What training do you need?
It’s Complicated so Let’s Unpack It

• Rise in the number, type, density and complexity of development proposals regionwide
• Rise in the number of zoning validity challenges
• Indicative of:
  • Significant development pressure
  • Growing population and business communities
• Old ways may no longer work, may be too cumbersome, leave communities unprepared and having to accept development they don’t want and exposed to legal challenges
Common Zoning Validity Challenges Workshop

• Will cover:
  • Purpose of zoning
  • Due process and equal protection
  • How to handle uses not provided for in the zoning code
  • Exclusionary zoning
  • Fair Share
  • Spot Zoning
  • Takings
  • Downzoning
  • Multi-municipal Planning
Public Engagement
LVPC 60th YEAR LVTS
Lehigh Valley Planning Commission 1961-2021 Lehigh Valley Transportation Study

8th Annual Gala + Awards December 9th!
LVPC Morning Call Column

- Publishes about every 5-6 weeks
- Gives Commission a chance to release data or explain policy
2022

Lehigh Valley General Assembly Meetings

March 29th & November 29th, 2022