

LEHIGH VALLEY PLANNING COMMISSION
Municipal Planning Code Amendments Working Group Meeting
DRAFT Minutes from the Friday, December 3, 2021
In-Person

The Municipal Planning Code Amendments Working Group met in person on Friday, December 3, 2021 at 2:00 pm.

Members in Attendance:

Gary Asteak, Attorney	Diane Kelly, South Whitehall Township
Brian Carl, Lowhill/Weisenberg	Dave Manhardt, South Whitehall Township
John Diacogiannis, Hanover Township (NC)	Kerry Rabold, Salisbury Township
Percy Dougherty, Lehigh County Commissioner	Lee Rackus, Whitehall Township
Jay Finnigan, Hanover Township	Tom Petrucci, Plainfield Township
John Gallagher, Bethlehem Township	Mark Saginario, Tatamy Borough
Sunny Ghai, Upper Macungie Township	Lori Stauffer, Lower Nazareth Township
Darlene Heller, City of Bethlehem	Melissa Wehr, Hanover Township (LC)
Monica Hodges, South Whitehall Township	

LVPC Staff Present: Ms. Benco, Ms. Bradley and Ms. Seitz.

Ms. Bradley called the meeting to order.

Minutes:

Ms. Bradley discussed the goal of the Municipal Planning Code Amendments Working Group, which is to develop a single platform and advocacy strategy. The group will outline changes to the Pennsylvania Municipalities Planning Code (MPC) and identify areas where local governments need support in sharpening the tools they have now. Then, the group will develop a single legislative platform for all levels and types of governments, as well as an educational strategy to support better decision-making. An advocacy strategy will be developed, and then the group will advocate for change. The working group will have three meetings prior to the end of 2021 and in 2022 the group will begin their advocacy. This is the second meeting of the three planned to develop the draft platform.

Changes to the MPC – Areas Where Local Governments Need Support / Sharper Tools

Ms. Bradley states that, at the group's previous meeting on November 29th, the group identified several areas where local governments need support and additional tools to address development impacts and community needs. The issues identified are included in the minutes from that meeting. Ms. Bradley asks the group if there are any additional issues or tools that should be included in the platform.

- **Affordable housing is a growing issue**
 - Ms. Heller states that local and regional growth has affected the affordability of housing. There is legislation that enables fees for impacts, such a recreation fees, however there are none related to affordable housing. The MPC is lacking tools to address the affordability of housing overall.

- **The MPC requires municipalities to allow all land uses in zoning and provide for all types of housing, but the extent of ‘fair share’ is unclear.**
 - Mr. Manhardt mentions that communities in a multi-municipal comprehensive plan can benefit from joint zoning and asks if that applies to joint ‘fair share’ as well, where each community does not necessarily have to provide for every type of housing but can across a group. This could help in farming areas that don’t have the infrastructure for higher density housing for example.
 - Mr. Asteak states that the group and the platform should be clear that the communities believe in providing their fair share of housing, and providing for all uses in their zoning, but the legislature needs to help the communities meet their needs and the requirements of the MPC by law. Currently, the courts make decisions based on interpretations of the MPC – resulting in ‘fair share’ – and the legislature needs to give the courts more guidance by defining what ‘fair share’ is, and a due process for that, like making clear provisions in the MPC that allow for joint fair share in a multi-municipal planning setting. The MPC doesn’t explicitly prohibit it and it doesn’t explicitly authorize it either and the
 - ‘Gray area’ creates uncertainty and confusion.
 - Mr. Ghai states that communities need a way to determine when there is enough of a particular type of land use, and that land use would no longer need to be provided for.
 - Mr. Asteak adds that the legislature could provide municipalities with guidance to determine their ‘fair share’, including how many or how much of particular uses.
 - Ms. Bradley states that municipalities will be offered a training course on common zoning challenges and how to address them with tools available now such as downzoning, upzoning, fair share and due process. LVPC is developing this for 2022 and hopefully this can help support local government refinement of current tools.
 - Ms. Hodges asks if you have to allow for certain uses (not already provided for in the ordinance) if a developer asks, such as high-cube warehouses.
 - Mr. Asteak adds, do municipalities still have to allow them if a community does not have the proper equipment to serve them? For example, a fire truck with a high enough ladder. If the legislature defined this, municipalities would not have to rely on the opinion of judges.
 - Ms. Bradley states that high-cube warehouses are a specific use, separate from traditional warehouses, and must be added in the zoning ordinance. They cannot be excluded on the basis of just fire equipment, they must be allowed in some form, even if only up to a maximum height that can be served by current available fire equipment. High cube warehouses should also be looked at as automated warehouses. Maybe, they aren’t that tall, but if automated across a 500,000+ square foot floor plate at four stories the net affect potentially the same as a larger warehouse with a smaller floorplate. Looking at potential impacts is the key with the zoning code, not just dimensional criteria.

- **The impact fees municipalities can charge do not cover the costs of that development's impact.**
 - Mr. Asteak states that municipalities are able to charge some types of fees based on the anticipated impacts of a development, such as traffic impact fees. However, communities do not receive enough money to cover the cost of actually addressing the impacts of development. For traffic, that includes such things as the cost of traffic signals and acquiring land to widen roads. To address broader impacts, communities should be able to charge emergency management services fees to cover fire, police and ambulance services. There may be other types of impact fees needed as well. Municipalities should ask the legislature to address the true needs for all types of development.
 - Mr. Saginario states that another issue with impact fees is the regional impact – one community may require traffic impact fees, but traffic from one site will eventually move into an adjacent municipality. Bath Borough is one example of this. Impact fees will not benefit a community when the impacts are generated within an adjacent municipality. Can impact fees be created through multi-municipal planning areas? Does the MPC speak to this?
 - Additionally, the process of instituting an ordinance for impact fees is onerous and is basically impossible in smaller communities. For other communities it does not yield enough benefit.
- **The MPC permits Timber Harvesting where it is not always appropriate.**
 - Mr. Petrucci expresses interest in stronger timber harvesting regulations. A frequent pattern that occurs is that a site will be clear-cut to harvest the timber, and then a development proposal eventually follows because the site is vacant. Timber harvesting in many instances is almost a guise for prepping for development.
 - Could we suggest the Legislature look at other States and point to the success of similar types of regulations there?
 - In New England, possibly Vermont, there may be some good examples of timber harvesting regulations.
 - Ms. Rabold mentions that one issue is that timber harvesting is part of the Right to Farm Act and is looked at as a form of agriculture.
 - Ms. Bradley adds that this is an important point – elements of the group's platform will need to be vetted to see if other laws come into play, beyond MPC.
- **The review time frames provided in the MPC are not realistic.**
 - Ms. Rabold states that municipalities have staff limitations to process submissions. These are projects that should be thoroughly looked at, which is often difficult when rushing to meet MPC deadlines to go to Planning Commissions.
 - Review time frames would be more reasonable if municipalities were able to tell applicants that a submission will take 60 days to go through different agencies prior to being placed on the meeting agenda. The time clock needs to enable state, county, municipal planning to support each other.
 - Ms. Bradley adds that municipalities are beholden to the developer to grant review time extensions and that this is another issue. Certain developers will force a community to act when they know their plan in

incomplete to force the plan to the courts effectively circumventing local governments in a worst case.

- **Examples of good planning regulations from other states:**
 - Maryland – suggested by Ms. Bradley
 - Has good county planning
 - New Jersey – suggested by Mr. Manhardt
 - Strong regional planning regulations and incentives
 - Comprehensive plans have a lot of teeth
 - Highlands Regional Master Plan is a good example
 - Florida – suggested by Mr. Manhardt
 - Comprehensive plans have a lot of teeth
 - Idea of Concurrency – every development has to address their impacts
 - Florida has a lot of development and a lot of successful development so the argument can't be made that it doesn't work
 - Ms. Bradley noted that stronger county/regional planning is needed to back up municipal planning and vice versa.
 - Other states with good planning outcomes have strong county-level planning that is able to back up municipalities

Platform Development

- **Legislators' constituents are the ones that ultimately bear the cost when there is a lack of planning tools to mitigate development impacts.**
 - Mr. Petrucci states that the group's overarching strategy communicated to the legislators has to be that their constituents ultimately bear the cost of a lack of planning from the beginning. As development pressure increases these issues will only intensify and become politically more and more contentious.
- **Encourage state legislators to work with LVPC and communities in partnerships to take advantage of planning experience and knowledge.**
 - Ms. Stauffer states that the group needs to encourage legislators not to dismiss the municipalities' concerns and requests and encourage them to work with LVPC to take advantage of experience and knowledge in this area. LVPC sees what's going on across the entire region and has experience along with their solicitors. The legislators should be relying on the group to craft any legislation.
- **These improvements should be options not mandates and benefit municipalities across all of Pennsylvania.**
 - Ms. Heller states that a challenge of this effort is that there are many different kinds of communities across the state. Some see a lot of development, like the Lehigh Valley, and some do not and want to see the Lehigh Valley's rate of development in their own communities. Some want to see more development than we have here. This needs to be a state-wide message.
 - The Pennsylvania Chapter of the American Planning Association should back this effort, as well as the Pennsylvania State Association of Township Supervisors.
 - Mr. Dougherty notes that this is of particular concern to the County Commissioners Association of Pennsylvania, as well and Ms. Heller's observation is very sound.

- Mr. Asteak adds that legislation could be drafted that allows all communities to have what they need.
- Mr. Petrucci adds that, with regards to the Pennsylvania constitution and uniformity, as long as all communities have the same options (versus mandates or requirements) there is no reason not to support change. The proposed platform should be approached as additive versus prescriptive. Why couldn't local governments have more tools?
- Ms. Stauffer adds that the group is not asking for anything prohibitive for other communities.
- Mr. Asteak states that a strategy should be to find out what rural communities need as well, so rural legislators would back this effort. The messaging of this effort should not refer to any particular land use specifically and should remain loosely defined.
 - Whatever the group suggests needs to be an optional tool. For example, if you want different types of impact fees, they can be an option.

Adjourn

Ms. Bradley ended the meeting.

Next Meeting: Friday, December 17, 2021, at 10:00 am at LVPC, 961 Marcon Blvd, Allentown, PA 18109

Submitted by,
Becky Bradley, AICP Executive Director
Heather Ferguson, Senior Advisor