

Chapter 1

Why Do It?

In this chapter:

⇒ Reasons to Plan Together:

- Economic
- Environmental
- Fiscal
- Legal
- Political
- Availability of Special Tools

1.1 Cooperative Agreements Among Municipalities as the Basis for Planning and Action

Choice. The new provisions of Article XI of the MPC authorize counties and contiguous municipalities to use intergovernmental cooperative agreements as a way to work together to develop a comprehensive plan and carry out that plan through consistent ordinances and actions. A great attraction of the new multi-municipal approach is that the law no longer requires participants to adopt a joint zoning ordinance in order to achieve a legally defensible distribution of permitted land uses among participating municipalities. Each municipality can have its own zoning ordinance administered through its own boards and commissions, and govern its own land and street corners—which are mostly local concerns—so long as its actions are generally consistent with the multi-municipal commitments made with its neighbors.

Cooperative planning and implementation are not mandated—counties and municipalities must choose to use the cooperative opportunities the law provides. A municipality cannot be coerced into adopting a multi-municipal plan without the agreement of the governing body. A municipal governing body has to decide that its own interest lies in cooperative planning and implementation, and, if so, make a good faith commitment to the process of developing a plan and carrying it out.

DCED's Governor's Center for Local Government Services [Intergovernmental Cooperation Handbook](#) makes the case for cooperation on many issues and should be consulted by municipal officials considering cooperative action through agreements. ■

MPC Section 107 Definition:

“Multimunicipal plan,” a plan developed and adopted by any number of contiguous municipalities, including a joint municipal plan as authorized by this act. ■

Potential negative impacts of regional developments approved in isolation without cooperative planning and action:

- ⇒ competition for tax rates that limits the economic success of any one development;
- ⇒ increased overall costs of infrastructure investments for roads, water, and sewer facilities to the benefit of some and detriment of other communities in the region;
- ⇒ traffic and air pollution impacts on neighboring communities;
- ⇒ impacts on water quantity and quality from uses and activities upstream or in the same aquifer;
- ⇒ fragmentation and loss of rural lands for rural uses like agriculture, hunting, and fishing that benefit residents in the region and the state. ■

Why choose cooperation? Many municipalities are already sharing schools and athletic and recreational ventures, as well as natural and rural environments, shopping districts, churches, and service clubs (e.g., Kiwanis and chambers of commerce). It is a natural step to plan together for development and conservation measures that will affect the quality of life for residents and businesses that already share the activities of daily life.

1.2 Reasons to Plan Together

There are sound economic, environmental, fiscal, legal, and political reasons why cooperative planning and action will appeal to many municipalities.

A. Economic Development

Municipal officials have the responsibility and desire to attract economic development to their communities to provide jobs and tax revenues to support municipal services and schools. Yet not all economic development is beneficial or sustainable over the long term, particularly when the competition for tax revenues among municipalities results in profitable economic activity moving ever outward from one municipality to the next.

Haphazard, repetitious commercial development of highway-oriented strip shopping centers and big box retail “power centers” offering regional-scale shopping in each municipality to the same region’s customers eventually dilutes the customer base for all retail in the area. This kind of development deprives Main Streets in cities, boroughs, and townships of shoppers, leaving empty storefronts and ailing economies. And it often results in empty “big box” stores, built to the specifications of one national retailer and apparently unattractive to others. Some suburban townships have seen the development of new shopping centers where farms once existed, while older shopping centers are unable to attract tenants and remain vacant. This type of sprawling commercial

development, sometimes built for national chains that impose a uniform national architecture, can detract from the unique character of local communities.

Good planning and cooperation among municipalities is a way to attract quality economic development that can be sustained and benefit all the participants. For example, to attract desired industrial development, understanding the existing market (based on realistic absorption rates) and the capacity to prepare sites for development (based on limited state and local funding), cooperative planning among municipalities becomes an important economic development tool. It also provides the opportunity to negotiate about the appropriate location of revenue providing land uses and how the benefits and burdens of various developments can be shared.

The ability to designate growth areas that include existing developed areas enables cooperating municipalities, whether urban, suburban, or rural, (1) to target areas for revitalization through public investment, upgrade, and enhancement so that they will attract development and be a viable alternative to outward development; and (2) to target urban areas that have valuable neighborhoods or economic, historic, or cultural resources as areas to be protected and enhanced by investment.

By targeting economic development sites that are beneficial to both the private and public sectors, and avoiding the negative impacts of competition for tax ratables that often result in poor site choices and design, municipalities can enhance their ability to attract quality development.

Enhanced Property Values. People sometimes oppose planning and land use regulation because they think that it will decrease property values. The opposite is usually the case. Property values increase in well-planned communities, which has been evident since William Penn's plan for Philadelphia made the city the most well-laid out and attractive city in the new world. Zoning that implements a good plan regulates uses,



A failed shopping center:

Thoughtful planning among cooperating municipalities will establish the appropriate amount and locations of retail on a regional basis. ■

Some characteristics of quality economic development:

- ⇒ *Substantial investment*
- ⇒ *Good wages and benefits*
- ⇒ *Well-planned site development*
- ⇒ *Staying power*
- ⇒ *Relationship to existing developed areas*



An active downtown:

When communities plan together, the life and economy of a central downtown in one municipality may serve the entire region. Existing retail and employment centers are reinforced and preserved. ■

Emerging Trends in Real Estate 2002

- ⇒ *Properties in better-planned, growth-constrained markets hold value better in down markets and appreciate more in up cycles.*
- ⇒ *Areas with sensible zoning, parks, and street grids with sidewalks will age better and appreciate more than places oriented to disconnected cul-de-sac subdivisions and shopping strips, navigable only by car.*
- ⇒ *Markets where you can build too easily tend to produce lower returns.*

Price, Waterhouse, Cooper LLP
Lend Lease Real Estate Investments, Inc. ■

Costs of Sprawl

Sprawl is a term that often refers to what people don't like about the development they see happening around them. As defined by land use experts, it is a regional pattern of development that is low density, non-contiguous outward or "leapfrog" expansion. It is automobile dependent, consumes agricultural and environmentally sensitive lands, and spatially segregates uses. It is usually characterized by many developers operating independently of each other and many local governments with varying rules and fiscal capacities.

Burchell, Robert W., et al, Cost of Sprawl Revisited: The Evidence of Sprawl's Negative and Positive Impacts, National Transportation Research Board and National Research Council, Washington, DC, 1998. (A comprehensive literature review.) ■

density, height, setbacks, and open space requirements important to health and quality of life. Without zoning, landowners can develop land for any use and in ways that may have negative impacts on other landowners and on the community. Zoning needs to be flexible and not overly restrictive. For example, the rigid separation of uses that was the hallmark of early suburban zoning meant that people could not walk to a store near where they live. However, zoning regulation that implements a strong plan demonstrably increases the value of property by giving landowners and developers certainty about what will happen around them and in the community.

B. Preservation of Environmental Quality and Resource Lands

Natural resources do not respect political boundaries. Watersheds, air basins, forests, and wildlife habitat usually include more than one political jurisdiction, and often many jurisdictions. Multi-municipal planning enables municipalities to plan for the conservation of these resources across municipal boundaries so that each municipality does its part—for example, in establishing and maintaining vegetated stream buffers along a river or stream for water quality, habitat protection, and recreation.

Planning together also allows municipalities to work together to develop and conserve man-made green resources—linked parks and open space systems that may include greenways and trails for ecological or recreation purposes, forested lands both public and private (where allowed) for hunting and fishing, and contiguous areas of farmland.

Farmland is a category of land use that is an economic, industrial, and commercial use, which may also be an open space, historic, and aesthetic resource. Maintaining large contiguous areas of farmland through various conservation measures is essential to keeping agriculture economically viable by avoiding the fragmentation that ultimately makes farming untenable.

C. Fiscal Savings

It can be fiscally desirable to plan and act together with neighboring municipalities for a number of reasons:

1. The cost of developing a comprehensive plan can be shared among the county and participating municipalities. A strong comprehensive plan that deals thoroughly with all the subjects that must be addressed (see Chapter 3—Planning: Elements of the Comprehensive Plan) is an expensive undertaking. With contributions from participating municipalities, and possibly the county and the state, through DCED’s Land Use Planning and Technical Assistance Program (LUPTAP), the cost of a good plan for the region of cooperation can be supported. Each municipality does not have to do extensive comprehensive planning, though each may want to do some more detailed planning as to how and where they will provide for specific uses and infrastructure and conserve specific identified resources consistently with the agreed-upon multi-municipal plan.

DCED has already indicated priority for planning grants to multi-municipal planning areas. Under Section 301.5, up to 25% of planning grants shall be prioritized for individual municipalities that agree to adopt plans and ordinances generally consistent with the county comprehensive plan, but no limitation applies to agency discretion to make grants for multi-municipal planning under Article XI.

2. Potential cost savings on shared services, administration of the plan and supporting ordinances, and joint economic development projects can be identified and accomplished through multi-municipal sharing and agreements.

3. Under Article XI, state agencies may give priority to funding projects that implement a multi-municipal plan. This can apply to any state program—e.g., transportation, housing, agricultural or historic preservation, economic development grants and loans, etc.—where the state agency

The Costs of Sprawl in Pennsylvania, a study prepared by Clarion Associates and published by 10,000 Friends of Pennsylvania in 2000, looked at national and Pennsylvania studies on the subject and did independent analyses of 21 municipalities in 6 geographically diverse metropolitan regions of the state. The study concluded that sprawl was occurring in all regions, large and small.

While sprawl undoubtedly benefits some businesses and landowners, it creates hidden costs that are borne by people in the region or in some cases by all people in Pennsylvania. The study identified and quantified costs in five major areas:

- ⇒ *Increases in the costs of infrastructure—water, sewer, and utilities—and in the costs of housing and schools;*
- ⇒ *Increases in the costs of roads and transportation;*
- ⇒ *Consumption of agricultural lands, natural areas, and open spaces;*
- ⇒ *Concentration of poverty and acceleration of socio-economic decline in cities, boroughs, and older suburbs; and*
- ⇒ *Increases in pollution and stress.*

Municipal officials will want to consider the findings of these studies and others in deciding how they plan for development. Planning together can help to avoid sprawl, while assuring that development does provide housing and commercial choices in both new and older communities. ■

Legal Advantages
Validity Challenges

What the new provisions of MPC Sections 916.1(h) and 1006-A(b-1) say is that where municipalities have adopted a multi-municipal plan and are implementing it with generally consistent ordinances, the zoning hearing board or the court in any zoning challenge:

... shall consider the availability of uses under zoning ordinances within the municipalities participating in the multi-municipal comprehensive plan within a reasonable geographic area and shall not limit its consideration to the application of the zoning ordinance on the municipality whose zoning ordinance is being challenged.

More about this topic in Chapters 4 and 6. ■

The 2001 Annual Report on Land Use is the third in a series of reports by the Governor's Center of Local Government Services. It describes initiatives throughout the Commonwealth, and the efforts of the Center and its many partners to implement Executive Order 1999-1. For more information, visit www.inventpa.com and www.landuseinpa.com. ■

decides to make implementation of multi-municipal plans a priority factor in funding decisions.

D. Legal Advantages

1. *Court Challenges.* The courts in Pennsylvania have upheld many landowner challenges to local zoning ordinances on the grounds that a particular ordinance was “exclusionary” in that it failed to provide land, or “enough land,” for a particular basic form of housing, or a particular commercial, industrial, and nonresidential use. The new law allows a group of cooperating municipalities to provide for all required uses over a larger geographic area, to allocate uses more intelligently, and thereby strengthen their individual ordinances against validity challenges. It also gives participants in the plan a chance to design their communities in ways suited to the distinct urban, suburban, or rural character of each participant.

Municipalities do not have to adopt a joint zoning ordinance to achieve this result, as required under prior law. A municipality can adopt its own zoning and other ordinances governing local development and conservation of resources. If those ordinances are also generally consistent with the multi-municipal plan adopted by the participating municipalities, a court is likely to sustain the local ordinance in a challenge, as long as all uses and a fair share of regional housing growth is planned for overall.

NOTE: It is still possible and desirable to adopt a joint zoning ordinance under Article VIII-A if municipalities are willing to do that. A joint zoning ordinance is probably the strongest protection against challenges, but may not be manageable for a planning area consisting of more than two to four municipalities. (There are four joint zoning ordinances covering 11 municipalities presently in effect—one covers 2 and three cover three.)

2. *State Agency Reviews.* State agencies should act consistently with the plan in permitting and funding decisions where a multi-municipal plan and conforming ordinances have been adopted by participating municipalities. If participating municipalities have agreed upon where infrastructure investments should be made or expanded in a region of the county, it is legally possible, but unlikely that the state will act contrary to their agreed-upon plan.

The combined effect of Sections 603(j) and 619.2(a), as amended at the end of the 2000 legislative session, requires general consistency among local and county plans and ordinances if the state is to be guided by them. For example, the Department of Environmental Protection's *Policy on Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Permits for Facilities and Infrastructure* requires information from local governments and the permit applicant about applicable county and local land use plans and ordinances, and whether or not they are generally consistent. The DEP policy provides, "Under the new law, DEP has the authority to deny a permit, put on a special condition or approve a permit where a conflict exists with local land use plans and zoning ordinances and the conditions outlined above [consistency among county and local plans and ordinances or consistency with multi-municipal plans and cooperative agreements] are met."

However, DEP cannot consider or rely upon local land use in its decision if consistency is challenged and the local government is not able to establish that such general consistency exists. There will be a distinct advantage for cooperating municipalities complying with the requirements of Article XI since Section 1105(a)(2) independently requires that the state shall consider and may rely upon multi-municipal plans and ordinances when reviewing applications for the funding or permitting of facilities.

Although DEP has adopted the most extensive policy on land use plans and ordinances as they will affect DEP decision-making, other state

State Agency Reviews

MPC Section 1105(a)(2) of Article XI provides that where municipalities are implementing a multi-municipal plan state agencies:

... shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities. ■

Public Support for Intergovernmental Cooperation

Public comments were collected in the 53 forums held by the Governor's Center for Local Government Services in the summer of 1998, after the 21st Century Environment Commission named "responsible land use" the number one issue for the next century.

In Pennsylvanians Speak, the report of those forums, the need for intergovernmental cooperation on land use is the number one issue of the 52 issues identified by the public at those forums. ■

A well thought out multi-municipal plan that involves landowners, businesses, and residents in envisioning and developing a plan that provides for both growth and conservation of resources can forge a strong political bond between the voters and their elected officials.

People will know where the region is headed and be less inclined to see regulations and actions that carry out that plan as isolated examples of unfairness or political influence.

There will always be controversies over particular projects, but a good comprehensive plan can serve as a political compact and a guide for both municipal officials and their constituents. ■

agencies, such as PENNDOT, PENNVEST, and the PUC, have also adopted policies on the relationship of local plans and ordinances to their reviews and decision-making. Summaries of state agency policies are provided in Appendix 1A-6 to this chapter.

E. Political

Most municipal officials are well aware that their communities are impacted by what goes on in neighboring municipalities. Forward-thinking local officials often realize that combining efforts with neighboring municipalities can result in economies of scale in the costs of comprehensive planning, as well as an ability to direct types of growth to areas where it is most appropriate and, where possible, related to historical land use patterns. Cooperative planning can lead to recognition of common needs and common solutions, with each municipality retaining its own autonomy and governing boards.

Residents and businesses are also well aware of the regional impacts of many land use decisions and want their municipal officials to deal with these and plan for them.

MPC Article XI enables municipalities to take account of the potential negative impacts of development described in the sidebar on page 1-2 by planning together to address issues of regional concern. These are, primarily:

- ⇒ planning for infrastructure location and investments,
- ⇒ designating growth and rural resource areas,
- ⇒ deciding on locations and needs for desired economic development projects that will benefit the region, and identifying measures that will mitigate less desirable impacts,
- ⇒ deciding (with school boards) on needs and locations for schools,
- ⇒ looking at fiscal impacts in ways that will benefit all the participants in the plan.

Such a plan, once adopted, can then be implemented through cooperative agreements and ordinances, as provided in Article XI, leaving each municipality free to regulate its own local uses and resources within the multi-municipal context.

1.3 Availability of Special Tools

In addition to the many good reasons for cooperative planning and action discussed above, Article XI makes powerful new tools available to municipalities that adopt and implement multi-municipal plans.

A. Transfer of Development Rights

Article XI allows municipalities that have adopted a multi-municipal plan to adopt a transfer of development rights program (TDR) for the region of the plan. This will be especially desirable if the cooperating municipalities choose to designate growth areas for development and rural resource areas for limited development compatible with rural uses. TDR will enable those municipalities to set up a program by ordinance identifying sending areas where development rights can be purchased and receiving areas where development rights can be used. TDR is discussed in more depth in Chapter 7.7.

The requirements of such programs can vary, but their purpose is to enable owners of agricultural, forested, and natural resources lands to profit from the sale of development rights and to keep their lands rural, while benefiting from the value of development within the region.

NOTE: TDR may be used in regions that have adopted a joint zoning ordinance or where there is a written agreement among two or more municipalities “within the boundaries of the municipalities that are party to the agreement.” Section 619.1(d). Presumably, this means that non-contiguous municipalities that have adopted TDR ordinances may provide for transferring development rights from a sending area in one to a receiving area in the other.



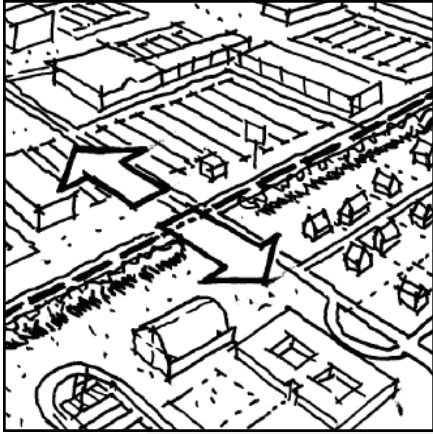
Transfer of Development Rights:

Transfer of development rights is a technique for moving development rights from one municipality or portion of a region, where it would change rural uses and character, to another, where more dense development is desirable. See Chapter 7.7 for a more complete analysis of this planning tool. ■

B. *Sharing of Tax Revenues and Fees*

Article XI authorizes municipalities that are part of a multi-municipal plan to share tax revenues and fees through a program spelled out in a cooperative agreement. This would, for instance, enable municipalities to agree that one or more of them would provide for a regional commercial mall or industrial park, and that some percentage of the tax revenues from those facilities would be shared among all the participants. Such an agreement could benefit the entire region by preventing the overbuilding of competing facilities that may not fare well economically, while assuring that all municipalities in the region who need such development to support their schools and services benefit from well-planned commercial development. (More about sharing of revenues and fees in Chapter 7.9.)

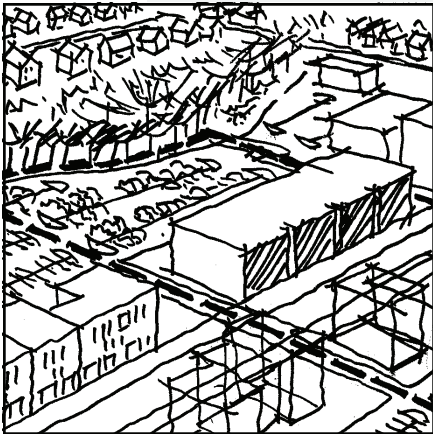
NOTE: Tax revenues and fees may also be shared among municipalities that adopt a joint zoning ordinance. Section 619(c)(2).



In multi-municipal planning, land uses and tax revenues can both be shared so that, for example, one township contains the schools (which are supported by tax revenues) and the other contains the shopping and office centers (which provide the tax revenues). The arrows on this illustration symbolize sharing across municipal boundary lines. ■

C. *Specific Plans*

Article XI authorizes only municipalities cooperating in a multi-municipal plan to develop a specific plan for an area designated for commercial, industrial or other nonresidential development and to develop one set of regulations for that area. Such regulation might cover: location, transportation, utilities, land coverage, building intensity, open space, and natural resource requirements for this specific nonresidential area. The regulations would then be adopted by the municipality or municipalities where those facilities are planned. The regulations must be consistent with the adopted county or multi-municipal plan and can be enacted into the municipal ordinance or as a separate ordinance repealing the applicable zoning ordinance for that area.



A specific plan may provide for all aspects of a nonresidential development, including building heights, front yard setbacks, parking locations, etc. This example illustrates a specific plan for a large site in an existing downtown commercial area. ■

The advantages of a specific plan are that it will enable the participants to plan in detail, working with a developer or developers if desired, for the kind of quality economic development they desire and then to expedite that development through one approval process. (Specific Plans are described in more detail in Chapter 7.6.)

Appendices to this Chapter:

- ⇒ Case Studies by Michael Frank, Appendix 1A-1
- ⇒ South Central Assembly Examples of Intergovernmental Cooperation, Appendix 1A-2
- ⇒ Lancaster County Summary of Multi-Municipal Initiatives, Appendix 1A-3
- ⇒ Monroe County Summary of Multi-Municipal Initiatives, Appendix 1A-4
- ⇒ Berks County Intergovernmental Planning Program, Appendix 1A-5
- ⇒ Adopted Policies by State Agencies, Appendix 1A-6

Next Steps—All municipalities should examine their options under the new MPC provisions as soon as possible. Your course of action might follow this course:

1. *Determine (if you have not already done so in a comprehensive planning process) what growth and development is needed in your community, where it should go, and what rural lands, natural and historic resources the community wants to conserve. Use some good planning, design, and facilitation expertise if possible.*
2. *Get a good legal opinion on whether your plans can be carried out under the MPC and case law, and what constraints you may face.*
3. *Determine whether your municipality would benefit by planning with contiguous municipalities for provision of all uses, economic development, infrastructure, housing needs, conservation of rural lands, shared costs and revenues.*
4. *Determine what contiguous municipalities it would make sense to plan with in order to achieve the patterns of growth and conservation your community wants.*
5. *Arrange facilitated meetings with those municipalities using whatever assistance may be provided by the county, state, regional, or local agencies or organizations. If you are prepared to plan together, consider a planning charrette, and proceed to develop the planning agreement, the multi-municipal comprehensive plan, and finally implementation agreements. ■*

Land Use Planning and Technical Assistance Program (LUPTAP) gives priority consideration to any county government or council of government acting on behalf of municipalities, any group of two or more municipalities, or a body authorized to act on behalf of two or more municipalities. Eligible activities under LUPTAP include: preparing and updating comprehensive community development plans, policies, and implementing mechanisms (zoning ordinances, subdivision regulations, and functional plans, such as downtown revitalization); water resource plans; and land development regulations. ■

Comprehensive Planning in Pennsylvania

As of August 2002, the Governor's Center for Local Government Services reports the following numbers of joint and multi-municipal planning initiatives underway in Pennsylvania:

Multi-Municipal Comprehensive Planning

- Prior to 1998—46 multi-municipal planning efforts covering 129 municipalities
- Post 1998—126 multi-municipal planning efforts covering 416 municipalities
- Total number—172 multi-municipal planning efforts covering 545 municipalities

Comprehensive Planning

- 1998—1,453 municipalities with comprehensive plans
- 2000—1,514 municipalities with comprehensive plans

County Comprehensive Planning

- 60 counties with county comprehensive plans
- 7 counties without county comprehensive plans
- 5 counties are currently working on comprehensive plans

LUPTAP Funding—New Planning Efforts

- 30 Comprehensive Plans for Fiscal Year 2000:
 - County Comprehensive Plans—10
 - Multi-Municipal Plans—14
 - Single Municipal Plans—6
- 46 Comprehensive Plans for Fiscal Year 2001:
 - County Comprehensive Plans—10
 - Multi-Municipal Plans—27
 - Single Municipal Plans—9