PUBLIC DEDICATION OF LAND AND FEES-IN-LIEU FOR PARKS AND RECREATION

A Guide to Using Section 503(11) of the
Pennsylvania Municipalities Planning Code

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Comments Requested

The Pennsylvania Land Trust Association welcomes suggestions for improvements to this document. Please direct comments to Andy Loza at aloza@conserveland.org. Thank you.

Updates

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EXCERPT FROM SECTION 503 OF THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE

Source: http://mpc.landuselawinpa.com

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

…

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

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

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

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

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

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

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

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

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

INTRODUCTION

Many Pennsylvania municipalities are experiencing growth pressures. New housing developments eat up open spaces previously enjoyed by communities. New residents stress existing park facilities and create demands for new and expanded recreational opportunities. Municipalities can manage these park and recreation demands by putting an ordinance in place to require the establishment of new parkland or park capital investments as part of each new development.

Pennsylvania municipalities have the power under Section 503(11) of the state's Municipalities Planning Code ("MPC")[i] to require developers to dedicate land to the municipality *for public parks and recreation purposes*. Called "public dedication" in the MPC, this tool is often referred to as "mandatory dedication" by those in the land use planning field.

Under Section 503(11), municipalities may also provide the option for developers to choose from several alternatives to public dedication. However, municipalities may not mandate these alternatives. Developers may voluntarily agree to do one or more of the following instead of or in addition to public dedication:

- Pay a fee to the municipality to be used for providing "parks and recreation facilities" accessible to the new development. This is known as "fee-in-lieu" of land dedication;
- Construct recreational facilities; and/or
- Privately reserve land within the subdivision for park and recreation purposes.

More and more municipalities in Pennsylvania are adopting public dedication ordinances. Many of these are concentrated in high-growth counties surrounding metropolitan areas, such as Lancaster, Chester, Berks, Lehigh, Northampton, Cumberland, Dauphin, and York Counties.

The Pennsylvania Department of Conservation and Natural Resources ("DCNR") has compiled a sample list of adopted public dedication ordinances entitled "Mandatory Dedication Ordinances across the Commonwealth" that can be accessed at http://conserveland.org/lpr/library?parent_id=23144. In addition, a variety of ordinances can be downloaded at http://conserveland.org/lpr/library?parent_id=23144.

Public dedication is based on the concept of impact fees: Development creates increased demand for municipal services or facilities. Requiring developers to provide amenities or funding for expanded or enhanced public amenities is an efficient and equitable way to offset some of the impacts of new development.

Prior to 1988, Pennsylvania communities seeking funds from developers for park and recreation facilities and certain other public improvements based these required contributions (known as "exactions") on MPC language that did not provide clear

authorization.[ii] Some developers objected to what they saw as municipalities' "arbitrary and abusive application" of vague exaction rules. Act 170 of 1988 revised and reenacted the MPC in part by specifically allowing municipalities to require dedication of land for park and recreation purposes. The law's intent was to establish "basic 'ground rules' … to limit municipal discretion."[iii] This was a good result for municipalities who previously had steered clear of imposing exactions for fear of running afoul of the law; and it was a good result for developers, who now could anticipate what could legally be required of them.[iv]

Although there has been little or no litigation relating to this particular section of the MPC, in recent decades the United States Supreme Court has weighed in on the general issue of developer exactions. The Fifth Amendment to the U.S. Constitution[v] reads in part, "…nor shall private property be taken for public use, without just compensation." In a series of cases interpreting this so-called "Takings Clause" of the Fifth Amendment, the Supreme Court has limited the ability of state and local governments to impose land use controls on private landowners. In *Nollan v. California Coastal Commission*,[vi] the Court declared that developer exactions violate the Takings Clause unless there is an "essential nexus" (i.e., logical connection) between the contributions required of the developer and the public impact of the proposed development.[vii] In *Dolan v. City of Tigard*,[viii] the Court added to the nexus test, ruling that an exaction of property from the developer (i.e., requiring parkland to be set aside) must be "roughly proportional" in nature and extent to the impact of the proposed land development.[ix]

These cases underscore the importance of documenting municipal park and recreation needs and having a well-supported municipal recreation plan prior to implementing a carefully constructed public dedication ordinance.

PREREQUISITES TO USING PUBLIC DEDICATION AND ITS ALTERNATIVES

In order to legally adopt a public dedication ordinance and impose a park and recreation exaction on a developer, the municipality, or several adjoining municipalities operating on a regional basis,[x] need to do several things:

- Adopt a recreation plan;
- Adopt a subdivision and land development ordinance ("SALDO");[xi] and
- Include in the SALDO a section providing for public dedication.

Recreation plan

Municipalities must prepare and adopt a park and recreation plan containing sufficient background analyses to justify a particular public dedication standard. Park standards – and the methodology for determining the standards – should be clearly outlined in the park and recreation plan. Several ways that municipalities can

determine park standards are described below under the heading "Dedicating Land for Public Parks and Recreation Purposes."

Generally, a park and recreation plan should contain the municipality's goals and objectives for parkland, park facilities and recreation. These goals and objectives should relate to the municipality's character, population density, and public demand for local recreation opportunities. The plan should compare local recreation preferences against the community's supply of local recreation opportunities so that the plan can recommend specific local improvements and programs to meet localized demands.

From the goals and needs, the park and recreation plan should derive corresponding levels of public service and set specific criteria (e.g., secure X acres of new community parkland per 1,000 population) to ensure that the supply of parkland keeps pace with community growth. The plan should also establish guidelines for acquiring acceptable parkland relating to a potential parcel's size, location, proximity to new development, and accessibility. Finally, the plan should recommend and justify the adoption of a public dedication ordinance.

More sophisticated plans will also include a capital improvements plan for acquiring and developing the parkland as lands are dedicated or fees-in-lieu revenues accumulate.

The park and recreation plan may be a freestanding document or may be included as a chapter (or chapters) of the larger municipal comprehensive plan.

A good example of a scope of work for a comprehensive recreation plan is described in the DCNR publication "Comprehensive Recreation, Park and Open Space Plan" (*see* http://conserveland.org/lpr/library?parent_id=28478). Smaller or more rural municipalities interested in creating a local park system may want to follow the simpler scope of work described in the DCNR publication "Mini Recreation and Park Plan" (*see* http://conserveland.org/lpr/library?parent_id=28478).

Municipalities can separately adopt a joint park and recreation plan or incorporate a joint plan within a regional comprehensive plan.[xii] The "Official Comprehensive Recreation & Open Space Plan" for Upper and Lower Saucon Townships in Lehigh and Northampton Counties respectively is an example of a multi-municipal comprehensive recreation plan (*see* http://conserveland.org/lpr/library?parent_id=28478).

Several small municipalities that operate on a joint basis incorporated a "mini" recreation plan into the "Southern Berks Regional Comprehensive Plan". Elements of the mini recreation plan are spread over several chapters of the comprehensive plan, which involved a broader scope than just parks, recreation and open space (*see* http://conserveland.org/lpr/library?parent_id=28478).

Subdivision and land development ordinance

To take advantage of the public dedication provision of the MPC, municipalities need to pass a SALDO, and this ordinance needs to provide for public dedication. The park standards in the SALDO should be consistent with those recommended in the municipality's official parks and recreation plan.

In some cases, counties administer the SALDO for local municipalities. In these situations, the local municipalities may need to lobby their county commissioners to adopt suitable public dedication sections within the county SALDO. The municipality should furnish the county with its specific public dedication standards or adopt a county standard. Lancaster County has included a public dedication provision in its countywide SALDO, and Centre County is considering such an approach for several of its municipalities within the Nittany and Penns Valley Regions as a result of their multi-municipal comprehensive plans. Additionally, the municipality should develop an effective means of communicating its desires during the development review process so that the county can act on its behalf when deciding whether or not to accept dedication of land, fees-in-lieu-thereof or another alternative.

Public dedication requirements cannot be imposed on land development plans (preliminary or final) that are pending prior to enactment of a public dedication ordinance. Only new plans may be made subject to the ordinance.

DEDICATING LAND FOR PUBLIC PARKS AND RECREATION PURPOSES

The MPC requires that a municipality's SALDO contain "*definite standards*" for determining the amount and location of land required to be dedicated (section 503(11)(ii)). Moreover, the MPC (as well as the before-mentioned Takings Clause cases and their progeny) requires that these standards "*bear a reasonable relationship to the use of the park and recreation facilities by future inhabitants of the development or subdivision*" (section 503(11)(v)). Because these phrases and concepts (together with the phrase discussed in the section below, "*accessible to the development*") are not defined in the MPC, municipalities have taken a variety of approaches to determine appropriate standards.

Determining how much parkland a community needs

Most municipalities start by deciding how much parkland they want to provide per 1,000 residents. The Pennsylvania Governor's Center for Local Government Services notes in its guide to subdivision and land development[xiii] that this is a logical way to develop "definite standards," because it ties recreation demand and the acreage requirement directly to the number of residents generated by a given development.

Many municipalities consider in their analysis the National Recreation and Park Association's ("NRPA") former recommendations on how much of each type of

recreation facility should be provided per 1,000 people. The upper range of those guidelines recommended that, for each 1,000 residents, a municipality provide ½ acre of mini-parks; 8 acres of community parks; and 2 acres of neighborhood parks.[xiv] Although these population-based standards have been criticized by many planners as a cookie-cutter approach to planning (and were in fact dropped in the most recent NRPA guidelines), they still provide a useful baseline *so long as communities tailor them to their particular needs*. For instance, one publication on public dedication notes:

> Most [criticism of the park space standards] focuses on the shortcomings of the standards in failing to consider local conditions. Despite all of these warnings there does not appear to be a widely accepted alternative to quantifying the amount and type of park space required to provide a quality recreation service. Refining these space standards would require the incorporation of citizens needs and preferences (needs assessment) in the formulation of new contemporary community standards. Such an approach, building on the historical basis of space standards but incorporating contemporary needs, is a legally defensible approach whose time has come. The unilateral adoption of the NRPA standards without incorporating contemporary community needs is an approach whose time is past.[xv]

Tailoring the NRPA base standards to a particular community could involve citizen surveys or looking at historic park provision or usage patterns. For instance, Peters Township (Washington County) analyzed its historic ratio of parkland to development and determined that it historically had provided 18 acres per 1,000 people in the municipality, and this became the basis for their formula. This approach ensures that future residents enjoy the same level of service as existing residents over time.

However, many municipalities have no history of park acquisition and yet their existing and future residents deserve local recreation opportunities. A rural municipality that has historically not considered parkland to be a community priority may be confronted with newfound public outcry for local recreation opportunities. Most of these communities will rely upon some accepted standard that has been advocated by a recognized authority (NRPA, a county, or even an adjoining municipality). For example, Lancaster County has suggested that at least ten acres of parkland be provided for each 1,000 residents within its 60 municipalities.

Many early adopters of public dedication used a "0.02 acres of parkland per dwelling unit" as their standard. However, more recently this standard is usually found to be deficient when confronting the public demand for parks in growing communities.

Types of parkland

In determining how much parkland a municipality will need, it is important to understand that there are several basic types of parks. For example, the Commonwealth of Pennsylvania maintains a park system with the following mission:

> The primary purpose of Pennsylvania State Parks is to provide opportunities for enjoying healthful outdoor recreation and serve as outdoor classrooms for environmental education. In meeting these purposes, the conservation of the natural, scenic, aesthetic, and historical values of parks should be given first consideration. Stewardship responsibilities should be carried out in a way that protects the natural outdoor experience for the enjoyment of current and future generations.[xvi]

In contrast, the emphasis of local municipal parks is likely to be on serving the daily recreation needs of local residents. Rather than attempting to provide for "state" or "county" sized parks, municipal officials generally strive to provide convenient accessibility and meet the regular, close-to-home recreation needs of local residents. Often municipal parks are provided in close association with local public school districts.

Municipalities may seek to provide what the NRPA labels as *community parks*. These parks are sometimes the showpiece of municipality's park system and feature multiple sets of athletic fields and courts, playgrounds, open play areas, picnic pavilions, and other related amenities. In larger, more affluent communities with more mature park systems, swimming pools can also be a part of the community park. Often a municipality will have only one of these parks, but in larger communities several community parks can be provided. These tend to be the biggest of municipal parks and can be developed in conjunction with larger public school campuses like middle and high schools. These parks typically are 10 to 50 acres in size and are often provided at a rate of between 5 and 10 acres per 1,000 residents. Their service area usually is municipality-wide in rural areas; however, where multiple community parks are provided, the service area can be smaller. In general, citizens typically must drive to community parks, so parking is of particular concern. Communities that are creating their initial park system may seek to create a community park first, as it focuses community attention on a single achievable result with tangible benefits offered to all citizens and voters.

Municipalities may seek to develop a series of *neighborhood parks* that are smaller and more closely integrated within residential areas. Here, limited open areas might have a playground, one or two athletic courts, and a multi-purpose field. Pedestrian access is of primary concern so that children have nearby play areas that are safely accessible. These parks typically are 1 to 5 acres in size and usually are provided at a rate of between 1 and 2 acres per 1,000 residents. Their service areas often are limited to sites that are easily accessible on foot. Neighborhood parks may have been built in conjunction with neighborhood elementary schools, based on the former public school district practice of locating elementary schools within ¼ to ½ mile of residences served. Hence, urban areas and older suburbs tend to have neighborhood park facilities while newer communities do not. In any event, neighborhood parks are an important component of a municipal park system that is well within the discretion of local officials to consider when adopting a public dedication ordinance.

Municipalities may look to provide for *tot-lots* and *pocket parks* that place parks even closer to the doorsteps of users. These facilities are less than one acre in size and are often part of a specific high-density community. They may contain a playground or an athletic court. Some municipalities feel that scattered, small recreation sites demand too much effort to maintain properly and prefer fewer, but larger, park and recreation facilities. Some urban municipalities are using the redevelopment process to have developers put in "green space," such as "passive" parks and gardens, which may require less maintenance.

Linear parks, often called "*greenways*," are gaining in popularity. Hiking and biking trails consistently rank high, when the public is asked to prioritize local recreation needs, and local governments have begun to take notice. While linear parks are usually opportunity-based (along a creek, abandoned railway, utility right-of-way, etc.), some municipalities are actively pursuing these types of parks without these opportunities.

Using public dedication and fees-in-lieu for trails

Municipalities may pursue dedicated land, or more commonly, fees-in-lieu, to create recreational trail systems. To do this, a municipality should include trails in its park and recreation plan with goals, standards, data and analysis just as would be included for any other park type. Trails should be listed in the public dedication ordinance as "park and recreation facilities" (as contrasted with transportation-oriented facilities) with acreage requirements just as with any other park-type.

If the municipality's trail plan or official map shows that the developer's land includes a future trail corridor, the dedication ordinance should require the developer to dedicate the appropriate land for the trail within the development (not exceeding the acreage standard set forth in the ordinance). If a planned trail lies beyond the development site, the municipality may request that the developer contribute a fee-in-lieu that can be used to acquire and secure the off-site trail corridor. Although technically the municipality cannot mandate the fee, developers will often prefer paying the fee rather than dedicating land within their development.

The 119-page publication, *Trail & Path Planning: A Guide for Municipalities* (http://dsf.chesco.org/planning/lib/planning/trailguide/trailguideentire.pdf or http://conserveland.org/lpr/library?parent_id=18436), is a valuable resource on this topic. An example of trail land dedication standards can be found in New Hanover Township's (Montgomery County) subdivision and land development ordinance (http://conserveland.org/lpr/library?parent_id=23144).

Finally, some municipalities place a premium on the protection of open space as a local recreation mandate. Here, public dedication can be used to supplement a host of conservation options so long as these open spaces are accessible for public enjoyment.

While the preceding types of parks all can be considered, municipalities usually focus on one or just a few of these types. Local officials should only adopt policies that seek the types of parks the municipality truly wants and intends to provide.

Sidewalks, complete streets and a question

Municipalities can require sidewalks and set standards for their installation as a condition for approval of a plat without need for the public dedication provisions of Section 503(11) of the MPC. If a municipality requires the provision of sidewalks in its SALDO, and installation of sidewalks is a standard practice in the municipality, then the municipality should be on solid ground in requiring sidewalks as a matter of course. Even if sidewalks have not previously been required or constructed in a municipality and the municipality has just made them a requirement in its SALDO, the municipality should be on solid ground in enforcing this so long as it consistently does so and has amended its SALDO appropriately.

Pedestrian and bicycling modes of transportation and recreation seem likely to grow in popularity in the coming decades as supply and demand trends for fossil fuels push energy prices higher. Newer planning policies already are starting to emphasize "complete streets" that are located and designed to accommodate all users, enabling pedestrians, bicyclists and motorists of all ages to safely move along and across streets. (For more information, see http://completestreets.org.) Communities may wish to consider the complete streets approach when devising street design standards and parkland dedication or fees-in-lieu-thereof requirements.

It is an interesting question as to whether a SALDO can be structured to require – in a legally defensible way and without recourse to public dedication – trails or bikeways as part of a land development's circulation system. Please send thoughts and experiences regarding this question to aloza@conserveland.org.

Sample Schedule of Municipal Park Standards		
Park Type	**Acres per 1,000 Population**	**Recommended Service Area**
Community Park	8 acres	2 mile radius
Neighborhood Park	2 acres	½ mile radius
Tot Lot	½ acre	¼ mile radius
Linear Park	1 acre	Community wide
Open Space	1 acre	Community wide
Total	**12.5 acres**	NA

Determining how much parkland each new development must contribute

In addition to determining how much and what types of parkland will be needed to service new development, municipalities will have to *calculate how much parkland*

each new development must contribute to satisfy the parkland standard. The following presents a hypothetical example using a simple methodology based on a per household or dwelling unit standard:

Assumptions in Hypothetical Example:

- Municipality intends to provide for local parkland at a rate of 10.5 acres per 1,000 residents (based on targets of 8 acres of community parks, 2 acres of neighborhood parks, and ½-acre of mini-parks); and,
- The average household size within the municipality is 2.63 persons (derived from U.S. Census Bureau reports).

Preliminary Calculation:

Dividing the targeted 10.5 acres by 1,000 persons is the equivalent of .0105 acres per person (10.5 ÷ 1,000 = .0105). Multiplying that number by 2.63 persons per household equals **.028 acres (**1,220 sq. feet) **per household** (.0105 x 2.63 = .028).

Adjusting the Calculation to Factor in Facilities:

If raw land was all that was needed to provide for local parks, then the .028 acres per household would enable the municipality to establish and expand parks at a rate that would keep pace with the projected growth in demand for park facilities. But local parks are more than raw land; they require infrastructure, improvements and recreational equipment. Consequently, municipalities seek to factor these development costs into the acreage calculation.

For local parks, the cost of developing parkland is often found to roughly equal the value of the raw parkland. This leads some experts to recommend that municipalities consider *doubling the preceding acreage figure* to derive a public dedication standard that would effectively meet expected demand for developed parks. For instance, under the hypothetical example above, the municipality would require that each new housing unit be required to dedicate .056 acres of parkland (.028 x 2 = .056).

In certain metropolitan areas of the Commonwealth, raw land values are so high that the cost of parkland improvement may be substantially less than that of the raw land costs. For example, if parkland development costs are projected to be one-third the raw land value, rather than doubling the initial acreage per household calculation, a municipality would instead multiply the calculation by 1.33. Conversely, there may be situations where parkland improvement costs will substantially exceed parkland values. The municipality should determine the appropriate multiplication factor using projections of park development costs and with assistance from certified park and recreation professionals and/or community planners.

The "Southern Berks Regional Comprehensive Plan" follows an approach similar to the above hypothetical example. Buckingham Township (Bucks County) also follows a similar approach and elaborates on it. The Township requires a minimum of 1,565 square feet of recreation land per dwelling unit, based on an underlying goal of providing 12 acres of parkland per 1,000 persons. This acreage goal is based on the

old NRPA standards combined with a township-wide service needs assessment. Additionally, the township requires the dedication of parking spaces so that the recreation facility can be truly accessible. The ordinance further requires set percentages of the dedicated land to be suitable for different types of park uses. For example, 65% of the dedicated land needs to be suitable for community park use, 25% for neighborhood playground use, and 10% for mini-park use.

Municipalities may set different standards for active parkland versus "passive" parks. Natural or open space-oriented parks do not require as much improvement; therefore, their development costs might only be a small fraction of the raw land value. In the hypothetical example noted above, if natural areas were the focus of the municipality, rather than heavily improved community or neighborhood parkland, it might be projected that park development costs only 20% as much as the raw land value. With this assumption, each household or dwelling unit would need to provide only .0336 acres of parkland (.028 x 1.2 = .0336).

However, in most cases the municipality will include at least some component of significantly improved parkland when adopting a public dedication ordinance. The "Official Comprehensive Recreation & Open Space Plan" (http://conserveland.org/lpr/library?parent_id=28478) for Upper and Lower Saucon Townships (pages 86-92) presents a suitable methodology for calculating public dedication standards when a municipality proposes a combination of improved parkland and unimproved natural open spaces.

Another methodology for establishing public dedication requirements is to tie the amount of land to be dedicated to the size of the lots developed. Subdivisions containing smaller lots are required to set aside more land for recreation. See, for example, § 320-53 ("Community facilities, park land and open space") of the North Coventry Township (Chester County) SALDO (http://conserveland.org/lpr/library?parent_id=23144). North Coventry requires developments averaging less than ½-acre per dwelling unit to dedicate or reserve 20% of the development for parkland, whereas developments averaging 1.1 acres per dwelling unit need to set aside 12% of the net acreage.

The above examples are not one-size-fits-all. Municipalities need to develop goals and standards appropriate for their particular communities.

How close does the dedicated land need to be to the new development?

The MPC requires that the dedicated land must be *accessible* to the new development AND the *location* of the land selected must bear a reasonable relationship to the use of the facility by future inhabitants of the development (sections 503(11)(iii), (v)).

NRPA guidelines can be consulted to determine sample service radii for tot lots, neighborhood parks, community parks, and other facilities desired in the municipality. For instance, a neighborhood playground might contain 3-5 acres of

land, be located within 2,000 feet of the new development, and have no substantial physical barriers or impediments to accessibility (such as a major road to cross). Certain recreation facilities, such as an off-site tot lot might even need to be adjacent to or connected by a sidewalk to the new development to be considered truly accessible. The municipality's recreation plan and/or the SALDO should include this information.

Some of the more developed and sophisticated municipalities identify ***park service districts*** within which neighborhood parks may be targeted. These usually relate to a predetermined service radius (say ½ mile) and/or areas within which children can safely walk and ride their bicycles to and from a park without having to cross a busy highway or some other physical barrier.[xvii]

Municipalities appear to have flexibility in determining what is a "reasonable relationship" between the location of land to be dedicated and its future use by inhabitants of the development. But bear in mind that in its guide, *Subdivision and Land Development in Pennsylvania*, the Center for Local Government Services suggests that "developers should not be expected to [pay fees-in-lieu] for the development of a *neighborhood* park 3 miles away."[xviii] This is because neighborhood parks generally have a ¼ to ½ mile service radius.

On the other hand, applying fees-in-lieu to a *community-wide* facility 2 miles away would be appropriate, because community parks generally have a 1 to 2 mile service radius. Likewise, if the municipal park and recreation plan provides for one centralized community park, the entire municipality arguably could be used as a service area.

Similarly, municipalities that have identified and planned for linear parks or natural areas as part of the municipality's park and recreation system can use public dedication or fees-in-lieu-thereof to acquire and protect such resources as indicated in their comprehensive recreation plans. For example, if a particular linear park is planned within a given neighborhood and fees are collected for that purpose from a prospective developer in that neighborhood, then such fees should be spent within that neighborhood. However, if a linear park is planned to serve the entire municipality, then fees collected anywhere within the municipality can be applied towards that linear park.

FEES-IN-LIEU OF DEDICATION OPTION

With a well-drafted ordinance in place, public dedication of land may be *mandated* of developers. If a municipality prefers an alternative to land dedication – fees-in-lieu of dedication, constructing recreational facilities, reserving private land, or a combination of these – the municipality may *ask* the developer for the alternative and the developer *may consent.*

Uses of fees-in-lieu

A good municipal recreation plan will identify key locations for local parks. Appropriate locations require a combination of particular conditions. For example, community and neighborhood parks are often athletics-oriented, requiring lands that are flat and well-drained. Parks must be located in convenient and physically accessible locations that will not generate adverse impacts on adjacent properties. Where linear parks or natural areas are important components of a park and recreation plan, the municipality often is seeking to protect natural and cultural features that are unique to a particular area. These considerations limit suitable park sites to a narrow set of locations. In most cases a proposed development would not contain one of these locations, and consequently, a developer would be hard pressed to provide the land that would meet the municipality's requirements.

The MPC addresses this problem, allowing municipalities to collect fees-in-lieu of parkland dedication. A municipality can save these fees until enough capital has been acquired to purchase the targeted parkland (keeping the 3-year deadline noted below in mind). Alternatively, the fees-in-lieu of parkland can be used to provide infrastructure or buy recreational equipment for new parks, and/or make improvements to existing facilities. The sites must be accessible to future residents of the new development. Fees *cannot* be used to simply maintain existing facilities or purchase maintenance equipment.

How much can be charged as a fee-in-lieu of dedication?

The MPC requires that fees charged "bear a reasonable relationship to the use of the park and recreation facilities by future inhabitants of the development or subdivision" (section 503(11)(v)). Whether the fees-in-lieu are used to help finance a public pool, a community center, or a neighborhood park, the municipality's recreation plan should spell out how these types of facilities will be accessible to residents of the new development.

As with land dedication, the MPC requires that the subdivision and land use ordinance contain "definite standards" for determining the amount of fees-in-lieu that may be imposed (section 503(11)(ii)). In short, the fee-in-lieu should bear a direct relationship to the value of the type of land that would otherwise have been dedicated.

Some municipalities simply state in their ordinances that the fee-in-lieu shall be equal to the average fair market value of the land otherwise required to have been dedicated, as determined at the time of filing of the subdivision application. The burden for determining this value may be placed on the developer, with the municipality able to dispute or verify the value.[xix] Other municipalities calculate an average per acre value in the municipality and post this amount in an annually-updated schedule of fees and charges.

For example, the previously described hypothetical example determined that each new dwelling unit in the municipality was required to dedicate .056 acres of parkland. Assume that the municipality undertakes an appraisal that determines that an acre of

"undeveloped" land within the neighborhood is worth $60,000. We can calculate that the fee-in-lieu of dedication in this case should be $3,360 per dwelling unit ($60,000 x .056 = $3,360).

The fee-in-lieu option can generate significant revenue. As of 2007, for instance, Newtown Township (Bucks County) requires dedication of 3,000 sq. feet of recreational land per dwelling unit or a fee-in-lieu contribution of $5,165/unit. A recent professionally conducted real estate appraisal performed for Upper Saucon Township (Lehigh County) determined that an acre of undeveloped open space within the township's planned conservation area was valued at between $25,000 and $35,000, while an acre within the planned residential neighborhoods was valued at $180,000 to $210,000. In turn, the township's fee-in-lieu was estimated at $8,390 per dwelling unit. The Southern Berks plan suggests a fee of $2,080 per unit, which it estimates will generate almost $4.5 million for park and recreation facilities by the year 2020.

Some municipalities balk at setting fees so seemingly high – that is until they come to understand that if they don't collect these amounts, they are still obligated to provide parkland and recreation facilities and will have to generate all of the necessary funds through other sources. Of course, fees-in-lieu of dedication is only one of several sources of potential park capital improvement revenue. Tax dollars, volunteer efforts, grants and donations can all supplement public dedication funds. But local officials need not apologize or feel guilty for requiring public dedication or collecting fees-in-lieu, as these policies are meant only to keep pace with their obligations to provide such facilities!

Deposit requirements and time limits

Fees-in-lieu must be deposited into an interest-bearing account, with the interest becoming part of the account. The account should specify for which park and recreation facilities the money is earmarked. The money must actually then be spent on those facilities.

Municipalities have three years to use the monies for the earmarked purpose. If the fees collected are not spent within three years, the developer may request a refund of the money plus accrued interest (section 503(11)(vii)).

Fees-in-lieu can't be required but can be incentivized

As noted above, both the municipality and the developer must agree in order to pursue the fee-in-lieu option instead of land dedication. Because recreation land close to population centers is very expensive and difficult for some municipalities to acquire, it may be more beneficial for those municipalities to require land dedication.

On the other hand, municipalities not looking to expand their base of parkland might be more interested in receiving fees-in-lieu of land dedication. The Appendix to this publication contains a sample "Open Space Dedication Selection Form" allowing

developers to voluntarily select fees-in-lieu of land dedication (if that is the option the township prefers in that particular situation).

Municipalities can provide incentives for developers to pursue the fee alternative instead of land dedication. For instance, the municipality could set the fee below the market value of the land dedication requirement.

In addition or alternatively, the municipality could defer collection of the fees until the time building permits are issued – rather than collecting fees in a lump sum from the developer at the time of development plan approval. (Because the MPC does not specify when or how fees-in-lieu should be collected, this remains up to the municipality.) The municipality could further incentivize the fee alternative by tying fee payment to when the developer can expect significant cash flows – such as when occupancy permits are granted.

The downside of this approach for municipalities is that someone needs to monitor and administer these multiple payments. And because municipalities have three years from the payment date within which to use the funds, the question arises as to when the three-year clock should start running. Obviously, a local government isn't going to want to keep track of 100 different 3-year deadlines triggered by issuance of 100 individual occupancy permits.

One possibility might be for a municipality to add the words "unless a longer period of time has been agreed to by the developer" to the section of its public dedication ordinance providing for the three-year deadline, in order to expressly permit the developer to voluntarily extend the time period. The municipality then presumably could ask the developer to agree in writing to set a realistic timeframe with the clock not starting until *all* the fees attributable to a particular development have been collected.

Alternatively, municipalities could work to have developers provide "voluntary contributions" instead of paying fees-in-lieu. This eliminates some of the strings attached to fees-in-lieu (such as limiting their use to a particular service area, prohibiting use of the funds for park maintenance, and the three-year deadline).

Municipalities often are able to convince prospective developers to either dedicate land or provide a fee-in-lieu thereof based upon the municipality's specific preferences for that development. The guide section found below and labeled "Working cooperatively with developers" provides suggestions for helping municipalities obtain their preferred option.

CONSTRUCT RECREATIONAL FACILITIES OPTION

Again, only public dedication can be mandated, but the municipality may allow developers the option to build park and recreation facilities *instead of* dedicating land or build park and recreation facilities *in addition to* dedicating less land. For instance,

if the public dedication ordinance required the developer to dedicate seven acres of land, perhaps both the developer and the municipality would prefer a compromise whereby the developer donates only four acres but builds a basketball court and tot lot on the grounds.

It can be very cost effective for both the municipality and developer to have contractors who are working on site preparation at a new development prepare and grade a nearby municipal athletic field while their equipment is in the vicinity. Likewise, contractors may be able to pour foundations and construct improvements programmed for the proposed park. Developers often welcome such opportunities, as they can select specific recreation amenities that will "fit" their target customers and help to market their proposed units.

Some municipalities integrate this approach as a predetermined option within the SALDO, while others require the granting of a waiver.

Whatever the final "package," the recreation facilities built should bear a reasonable cost relationship to the value of the acreage that otherwise would have been required to be publicly dedicated.

PRIVATE RESERVATION OPTION

During the subdivision approval process, the municipality and the developer can decide to designate, or "reserve," a tract of private land for park and recreation purposes. The land remains privately owned and is not dedicated to the municipality. The subdivision plan then shows the location of the future facility, such as a tot lot. A written agreement between the developer and municipality spells out the responsibilities of the developer or homeowners association with regard to building and maintaining the future facility. The benefit of this option is that the municipality can potentially avoid maintenance costs for the privately-owned park and recreation facility. The downside is that the municipality will not have as much control, the private facility will not be eligible for state-funded park improvement grants, and the agreement may not permit people who don't live in the development to use the facility, depending upon the wording of the agreement.

Again, as with the previous two alternatives, the municipality can make this option available to developers but cannot mandate its use.

The private reservation option need not be limited to using a homeowners association. Municipalities can approve the transfer of ownership of private reservation lands to other suitable entities who may be better equipped to manage these lands over time. A tot-lot that serves only the most immediate residents of the neighborhood might be logically owned and controlled by the homeowners association. However, a passive nature-based park with little physical improvement might be a good candidate for ownership and maintenance by a local conservancy. In contrast, a large athletic field complex might be best managed by the public school district. Municipalities should

consider the potential viability and desirability of alternative ownership/management arrangements as part of the development review process.

COMBINATIONS OF OPTIONS

A municipality may allow developers to partially or fully substitute public dedication of land requirements with any combination of fees-in-lieu, construction of facilities and private reservation options.

For example, in the case of a hypothetical large-scale land development, a municipality's SALDO might require the developer to dedicate 15 acres of parkland. In lieu of this dedication requirement, the municipality and developer might instead agree that the developer will:

- Pay a fee-in-lieu equal to the value of five improved acres of community parkland that is to be provided away from the subject property but within a reasonable service area for residents of the proposed development;
- Dedicate to the municipality four acres of the land to be developed for a new neighborhood park;
- Design and install those recreation facilities necessary to achieve a neighborhood-based level of amenity within the four-acre park; and,
- Transfer a half-acre of land to the homeowners association for a picnic area as well as a two-acre woodland within which the development's drip-irrigation community sewage disposal system outfalls.

This is but one example of the countless combinations that could be used to maximize the public benefit.

IMPLEMENTATION ISSUES

Amending a subdivision and land development ordinance to provide for public dedication

Like any ordinance to be adopted by a municipality under the MPC, local officials should carefully consider proposed SALDO revisions (language and standards) with professional guidance from community planners, park and recreation professionals, and solicitors. Such discussions and deliberations should take place in full public view with ready opportunity for public input. SALDO language should bear a direct relationship to the municipality's adopted park and recreation plan. Sections 504, 505, and 506 of the MPC specify applicable procedures for adopting and amending a SALDO. (Chapter 5 of the MPC can be accessed at: http://mpc.landuselawinpa.com/mpc_full5.html.)

Working cooperatively with developers

The subdivision and land development review process does not have to be a battleground between the municipality and the developer. Diane Kripas's article "Mandatory Dedication – Just One Source of Many"[xx] recommends a number of steps municipalities can take to work more collaboratively with developers to get the most out of their public dedication ordinances:

Develop the required recreation plan and identify neighborhood and community park needs. Legal challenges can result when the question of where the fees are spent arises. Fees should be directed towards acquisition or development of facilities that will serve the new residents. Unless a municipality can "sell" the concept of one centrally located community park, it is at risk of being challenged that this park is not benefiting new developments outside its service radius.

Adopt an ordinance that is coordinated with your plan and has fair and reasonable language. All developers should be treated equally. However, if a developer is willing to do more for parks than the ordinance requires (without the local government delaying the subdivision process or "strong-arming"), then the municipality should give that developer extra publicity. In a sense, this is a donation and should be treated like one.

Use other revenue sources to buy the most suitable land and have a list of capital improvement projects available for developers. Generally, land appropriate for active recreation is also appropriate for prime building lots. Parting with these lots can be a struggle. As long as the fees are not considered excessive, developers tend to prefer writing a check to losing lots. Buy the land before it's gone, develop a color-rendered drawing of your desired park, and show developers where their money will go or even allow them to select specific facilities that they will construct as their contribution. You cannot require a developer to give you fees or develop facilities. You have to "sell" the alternatives.

Be prepared – establish what you want as early in the planning process as possible. To ask for open space at the final plan approval stage will go nowhere. The sooner you tell the developer what your plan says about that neighborhood, whether fees or land would be best, and especially, what benefits new residents will receive from a new park, the more likely you will achieve success. Good relations with developers can make it easier to have discussions with them at the sketch plan stage, the best time to communicate your interests.

Parks and recreation staff and boards, planning commissions, and elected officials need to work together on desired open space contributions. Involvement by park and recreation staff is essential right from the outset. You should work together with the planning commission to review the plan, provide comments, and work with the local governing body to determine what is best for the park and recreation needs of future residents.

A public dedication program should be only one source of revenue used to support park capital improvement programs. Most Pennsylvania municipalities do not have sufficient land or facilities for current residents. Why should new residents be the sole contributors to a municipality's future park system? This may seem easier than applying for grants or soliciting for donations, but the development community will be more cooperative if a municipality is tapping all sources (taxes, grants, donations, etc.) to meet present and future recreation needs.

The above section was adapted and excerpted in part with the permission of the author.

Multi-municipal planning and public dedication

More municipalities are choosing to plan for park and recreation needs at the regional level. Some municipalities prepare regional recreation plans and then implement individual municipal park and recreation systems and programs. Others create longstanding cooperative efforts that are administered by regional staff and agencies.

Public dedication is an approach that can be implemented at the local, regional or county level. The "rules" about how these regulations are justified, created, and administered still apply, no matter the level. For example, land acquired or fees collected for a park to serve the region can be allocated on a regional level; but land acquired or fees collected for a municipal-level park would need to be allocated within that municipality.

(State grants for recreation planning, programming, peer-to-peer, feasibility, acquisition, and construction give preference to multi-municipal projects where there is a commitment to regional cooperation. Multi-municipal park and recreation planning especially makes sense when school districts that serve more than one municipality already offer some level of recreation service within multiple communities.)

Public dedication in residential, commercial or industrial zoning districts

Some municipalities have significant park and recreation demands generated by non-residents (e.g., commercial/industrial athletic league programs). However, the MPC is silent on whether public dedication can be imposed on ***non-residential*** developments. The MPC refers to public dedication as serving "inhabitants of the development or subdivision," and it is unclear if this term encompasses *employees* (*see* section 503(11)(v)).

Nevertheless, a number of municipalities do impose public dedication requirements on commercial and industrial development. Newtown Township (Bucks County), for example, imposes a dedication standard of 750 sq. feet of parkland per 1,000 sq. feet of building area or requests a fee-in-lieu payment of $1,291 per 1,000 sq. feet of non-residential building area.

An alternative approach that has been suggested is to tie the non-residential land dedication standard to the number of parking spaces used by employees in a development. In this guide's hypothetical example, .056 acres were required for every 2.63 residents (average household size) in a development. Similarly this non-residential approach could require .056 acres for every 2.63 parking spaces of employees who are not municipal residents and who use local park and recreation facilities.

There is disagreement in the planning field about whether or not public dedication should be applied to commercial or industrial uses, and it does not appear that this disagreement will be settled anytime soon. Therefore, to improve the odds that its public dedication ordinance will stand the test of time, a municipality that decides to require public dedication for commercial and industrial land uses should specifically document the recreational needs of commercial and industrial users who are not residents within the municipality and devise a methodology to determine their level of demand. Then it should create a standard that exacts the amount of parkland needed to serve future employees and make sure that such parks are readily accessible to the employees.

Ensuring that dedicated or privately reserved lands are maintained for park and recreation purposes

When parkland is to be privately reserved or dedicated and owned by a party other than the municipality, the municipality should require legal agreements (likely to involve conservation easements or deed restrictions) with such parties ensuring that the lands are held and managed in perpetuity for park and recreation purposes. Local solicitors should carefully evaluate such agreements prior to their execution. The municipality should also ensure that a suitable level of public access is afforded to the site as warranted by the size and type of park or open space.

APPENDIX 1: ONLINE RESOURCES

Public Dedication Ordinances and Related Material

Like all municipal ordinances, a public dedication ordinance can be relatively simple or quite complex. As municipalities' needs, staff, and goals vary, so will their public dedication ordinances. There probably are as many different examples of public dedication ordinances as there are municipalities that have adopted these regulations.

Adams County Public Dedication of Land for Parks Model Ordinance
Adams County Planning Commission
This is a county model ordinance that municipalities can use to create their own dedication of land and fees-in-lieu ordinance. It was printed in Adams County Vision for Parks, Recreation, and Open Space (Dec. 1997).
Download at http://conserveland.org/lpr/library?parent_id=23144

Adams County SIMPLE Model Ordinance for Public Dedication
Adams County Planning Commission
Adams County developed this model public dedication ordinance for use by the small municipalities within the county. Go to page E-6. It was printed in Adams County Vision for Parks, Recreation, and Open Space (Dec. 1997).
Download at http://conserveland.org/lpr/library?parent_id=23144

Mandatory Dedication Ordinances across the Commonwealth (2/2008)
Pennsylvania Department of Conservation and Natural Resources
A summary of public dedication ordinances adopted by municipalities across Pennsylvania
Download at http://conserveland.org/lpr/library?parent_id=23144

Moon Township - Land Dedication Requirements
Moon Township, Allegheny County
Moon Township's public dedication and fees-in-lieu ordinance.
Download at http://conserveland.org/lpr/library?parent_id=23144

New Hanover Township – Public Dedication and Fees-in-Lieu Provisions
New Hanover Township, Montgomery County
An excerpt from the New Hanover Township Subdivision and Land Development Ordinance. Includes standards for dedication of trail land ("Section 835. Standards for Park and Recreation Areas; Fee in Lieu of").
Download at http://conserveland.org/lpr/library?parent_id=23144

Newtown Township Fee Schedule
Newtown Township, Bucks County
This is the complete fee schedule for Newtown Township. Go to Part 9 of this document to see the fees associated with land dedication and fees-in-lieu.
Download at http://conserveland.org/lpr/library?parent_id=23144

North Coventry Twp Public Dedication and Fees-in-Lieu Ordinance
North Coventry Township
This document is an excerpt from North Coventry Township's Subdivision and Land Development Ordinance pertaining to public dedication and fees-in-lieu. Of particular note in this ordinance is that the dedication requirements are tied to the size of the lots to be developed rather than the more typical dwelling unit approach.
Download at http://conserveland.org/lpr/library?parent_id=23144

PA Municipal Code Chapter 5
This chapter of the MPC covers proper methods for adoption and amendment of subdivision and land development ordinances. Specifically, Sections 504, 505, and 506 specify applicable procedures for adopting and amending a SALDO.
Download at http://conserveland.org/lpr/library?parent_id=23144 or visit http://mpc.landuselawinpa.com/mpc_full5.html

Southern Berks Regional Comprehensive Plan
Berks County
A good example of a Regional Joint Comprehensive Plan. Go to Chapter VI for the topics related to public dedication of land and fees-in-lieu.
Download at http://conserveland.org/lpr/library?parent_id=23144

Township of Spriggettsbury - Fee in Lieu Ordinance
Spriggettsbury Township, York County
The Township of Spriggettsbury's adopted fees-in-lieu ordinance
Download at http://conserveland.org/lpr/library?parent_id=23144

Township of Spriggettsbury - Public Dedication Ordinance
Spriggettsbury Township, York County
Spriggettsbury Township's adopted public dedication ordinance.
Download at http://conserveland.org/lpr/library?parent_id=23144

Township of Spring - Public Dedication Ordinance
Township of Spring, Berks County
Spring Township's public dedication ordinance.
Download at http://conserveland.org/lpr/library?parent_id=23144

Whitemarsh Township Public Dedication Ordinance
Whitemarsh Township, Montgomery County
Whitemarsh Township's adopted public dedication ordinance.
Download at http://conserveland.org/lpr/library?parent_id=23144

Recreation, Park and Open Space Plans and Related Material

Comprehensive Recreation, Park and Open Space Plan
PA Department of Conservation and Natural Resources
A park and recreation plan may be a free-standing document or it may be included as a chapter (or chapters) of the larger municipal comprehensive plan. A good example of a scope of work for a comprehensive recreation plan is provided in this document.
Download at http://conserveland.org/lpr/library?parent_id=28478

Growing Together: A Comprehensive Plan for Central Lancaster County
The Lancaster Inter-Municipal Committee
The Park and Open Space Plan excerpt from the regional comprehensive plan adopted by 11 municipalities in central Lancaster County as of spring 2007.
Download at http://conserveland.org/lpr/library?parent_id=28478

Mini Recreation and Park Plan
PA Department of Conservation and Natural Resources
Smaller or more rural municipalities interested in creating a local park system may want to follow the simpler scope of work described in this DCNR publication.
Download at http://conserveland.org/lpr/library?parent_id=28478

Saucon Region Official Plan
Upper and Lower Saucon Townships
Harry B. Roth and Susan and Steve Landis
A multi-municipal comprehensive recreation plan for the Saucon Region of Lehigh and Northampton Counties.
Download at http://conserveland.org/lpr/library?parent_id=28478

Southern Berks Regional Comprehensive Plan (Rec. excerpt)
Berks County
This is an example of a "mini" recreation plan adopted by several small municipalities in southern Berks County that operate their recreational facilities on a joint basis.
Download at http://conserveland.org/lpr/library?parent_id=28478

Other Online Resources

Trail and Path Planning: A Guide for Municipalities
Chester County Planning Commission
This is an excerpt from the 119-page guide. Published in 2007. Included are excerpts from ordinances and detailed drawings on how trails and sidewalks are to be constructed.
Download at http://conserveland.org/lpr/library?parent_id=18436
Go to http://dsf.chesco.org/planning/lib/planning/trailguide/trailguideentire.pdf to download the entire Guide.

APPENDIX 2: LOCATING EXPERT ASSISTANCE

Municipalities interested in developing a comprehensive park and recreation plan and a public dedication ordinance should turn to the following professionals or organizations for assistance:

- Community planners who are members of the American Institute of Certified Planners (AICP);
- Certified Park and Recreation Professionals;
- Pennsylvania Recreation and Park Society;
- Pennsylvania Planning Association; or
- Attorneys with knowledge of community planning issues.

Contact the DCNR Bureau of Recreation and Conservation, for funding assistance to develop a park and recreation plan for your community and/or to prepare a public dedication ordinance. Find a DCNR Regional Recreation and Parks Advisor by calling 717-787-7672 or going to http://www.dcnr.state.pa.us/brc/Regional_Map.pdf.

APPENDIX 3: SAMPLE PARKLAND DEDICATION SELECTION FORM

I, _____(applicant), choose to pay a fee-in-lieu of dedicating open space or parkland for the proposed _____subdivision, located at _____. I recognize that the Township's public dedication fee is revised annually, with the fee of $_____ [*fill in appropriate fee here*] per acre for the year 2009. I agree to pay the fee for future final plan phases in effect in the year when they are filed for review. Failure to sign this selection form will mean that the Township assumes I will be dedicating parkland. Choosing to sign this form does not commit the Township to accepting a fee-in-lieu of parkland dedication.

_____ _____

Witness Date Applicant Name Date

_____

Company Title

ENDNOTES

[i] 53 P.S. § 10503(11). The responsibility and power to plan and regulate land use in Pennsylvania lies exclusively with local government, including counties. This is the result of the Pennsylvania General Assembly delegating to municipal and county governments a portion of the state's "police power" with respect to planning and land use controls to protect public health, safety, and welfare. Responsibility for land use planning and for regulating development is exercised through the authority granted to local officials by the Municipalities Planning Code (except in Philadelphia and Pittsburgh).

[ii] Section 509(a) and (k) stated only that as a prerequisite to final approval, and in lieu of the completion of any improvements, municipalities could require developers to provide enough financial security to cover the costs of any required improvements.

[iii] Letter from Philip E. Robbins, Pennsylvania Department of Community Affairs, to Virginia Rickert, Palmer Township Board of Supervisors (November 19, 1992), at p. 4, citing L.P. Symons, Esq., Local Government Commission report (198_).

[iv] Municipalities may not legally impose offsite exactions unless they are specifically authorized by the MPC:

> No municipality shall have the power to require as a condition for approval of a land development or subdivision application the construction, dedication or payment of any offsite improvements or capital expenditures of any nature whatsoever or impose any contribution in lieu thereof, exaction fee, or any connection, tapping or similar fee except as may be specifically authorized under this act. (Section 503-A(b).)

Municipalities may, however, condition subdivision approval on *onsite* improvements or fees-in-lieu thereof. See Soliday v. Haycock Twp., 785 A.2d 139, at 144-45 (Pa. Cmwlth. 2001).

[v] Passed in 1791.

[vi] 43 U.S. 625 (1987)

[vii] In Nollan, the Court held that the California Coastal Commission violated the "nexus" standard when it required that the Nollans grant a public beachfront easement over their property in exchange for obtaining a building permit.

[viii] 512 U.S. 374 (1994)

[ix] The United States Supreme Court in *Dolan* applied a new, two-part test for determining whether an exaction imposed upon a developer or landowner is unconstitutional. As enunciated in the *Nollan* case, an "essential nexus" first must exist between a legitimate government interest and the permit condition imposed by the local government. Second, there must be a "rough proportionality" between the exaction and the impact of the proposed development. Applying this test, the Supreme Court ruled that the city of Tigard, Oregon, had not justified its requirement that the owner of a plumbing and electrical supply store (1) dedicate the portion of her property lying within the 100-year floodplain for an improved storm drainage system, and (2) dedicate an additional 15-foot strip of land adjacent to the floodplain as a pedestrian and bicycle path. The total amount of land the city wanted to be dedicated amounted to about 10% of petitioner's property.

[x] See Ch. 30, MPC

[xi] Some counties administer a subdivision and land development ordinance on behalf of all or some of their municipalities.

[xii] Multi-municipal plans detailing how municipalities can plan and program parks cooperatively often are given priority for DCNR planning grants.

[xiii] Subdivision and Land Development in Pennsylvania, Planning Series #8 (2003).

[xiv] Recreation, Park and Open Space Standards and Guidelines, NRPA (1985), p. 56-57. For each type of recreational facility, NRPA guidelines also provide location criteria (e.g., mini-parks should be less than ¼ mile from a residential setting) and list the optimum size for each facility (e.g., a mini-park should be between 2,500 square feet and 1 acre). See Park, Recreation, Open Space and Greenway Guidelines, NRPA (1995-96), p. 94-95.

[xv] Acquiring Parks and Recreation Facilities Through Mandatory Dedication, R. Kaiser and J. Mertes (1986), Appendix E, "Park Space Standards."

[xvi] Quoted at http://www.dcnr.state.pa.us/stateparks

[xvii] Following are several municipalities where a park service district approach has been implemented:

City of Allentown, Lehigh County

East Hempfield Township, Lancaster County

Lampeter-Strasburg Region

Strasburg Borough and Strasburg & West Lampeter Townships, Lancaster County

Manheim Central Region

Manheim Borough and Penn & Rapho Townships, Lancaster County

Manor Township, Lancaster County

Muhlenburg Township, Berks County

Newberry Township, York County

Silver Spring Township, Cumberland County

Springettsbury Township, York County

West Manchester Township, York County

[xviii] Subdivision and Land Development in Pennsylvania, Planning Series #8 (2003).

[xix] For instance, the model public dedication ordinance appended to Adams County's Vision for Parks, Recreation, and Open Space states:

> The determination of the fair market value of the two types of space (primary recreation and greenway or natural resource) shall be the responsibility of the applicant and shall be acceptable to the governing body of the Municipality. If the Municipality should dispute the applicant's fair market value, it may either retain a certified appraiser at the applicant's cost to verify and/or adjust the applicant's fair market value to the appraiser's value, or it may require mandatory dedication of the required acreage and/or a portion thereof and the remaining portion amount in fee-in-lieu of dedication. (Section 610.04.)

[xx] Pennsylvania Recreation and Parks (Spring 1992), pp. 17-19, Diane W. Kripas, CLP.