Public Dedication of Land and Fees-in-Lieu for Parks and Recreation in Pennsylvania

Pennsylvania municipalities may require developers to provide parkland for new developments. They may also offer developers the option to instead pay fees, construct facilities, or establish private parkland.

Summary

As part of the land development process, a Pennsylvania municipality may require the developer to dedicate land to the municipality for park and recreation purposes. Called *public dedication* in the state's Municipalities Planning Code, professional planners often call this tool *mandatory dedication*.

At its discretion, a municipality may provide a developer *the option* to choose one or more alternatives to public dedication. However, a municipality may not mandate these alternatives, which are as follows:

- Pay a fee to the municipality
- Construct recreational facilities
- Privately reserve land within the subdivision for park and recreation purposes.

The municipality may use the dedicated land or fees collected *only for* providing, acquiring, operating, or

maintaining park or recreational facilities reasonably accessible to the development.

In order to institute a public dedication requirement, a municipality must first adopt a recreation plan that contains analysis justifying a particular dedication standard and incorporate the dedication requirement into its subdivision and land development ordinance.

Excerpt from the Pennsylvania Municipalities Planning Code

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, acquiring, operating or maintaining park or recreational facilities reasonably 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 identified as reserved for providing, acquiring, operating or maintaining park or recreational facilities. Interest earned on such accounts shall become funds of that account.

(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 used the fee paid for a purpose other than the purposes set forth in this section.

(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

Addressing demands of development on government

Many Pennsylvania municipalities experience substantial development pressure. 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 may manage these park and recreation demands by putting an ordinance in place to require the establishment of new parkland as part of each new development.

Pennsylvania municipalities have the power under §503(11) of the state's Municipalities Planning Code

("MPC")[1] to require developers to dedicate land to the municipality "for park and recreation purposes." Called *public dedication* in the MPC, this tool is often referred to as *mandatory dedication* by professional planners.

Under §503(11), municipalities may choose to provide a developer the option to select from one or more 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, acquiring, operating or maintaining park or recreational facilities reasonably accessible to the development." This is known as *fee-in-lieu of land dedication*.
- Construct recreational facilities.
- Privately reserve land within the subdivision for park and recreation purposes.

Public dedication is essentially an impact fee—a fee imposed by government on new development to help pay for the public services that the new development will demand of government. Development creates increased demand for municipal services and 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.

Public dedication used by many municipalities

Scores of Pennsylvania municipalities have adopted public dedication and fee-in-lieu ordinances. Many of these municipalities are concentrated in high-growth counties such as Lancaster, Chester, Berks, Lehigh, Northampton, Cumberland, Dauphin, and York Counties.

A selection of adopted ordinances may be found at the WeConservePA Library under the Public (Mandatory) Dedication and Fees-in-Lieu Ordinances library topic.

Clear authorization since 1988

Prior to 1988, Pennsylvania communities seeking funds from developers for park and recreation facilities and certain other public improvements based their required contributions (known as "exactions") on MPC language that did not provide clear authorization.[2] 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."[3] 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.[4]

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[1] 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).

[2] §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.

[3] 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_).

[4] 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. (§503-A(b).)

2014 law brought more flexibility

In 2014, the General Assembly clarified and modified the public dedication rules,[5] addressing three major matters:

- Use of land and fees
- Accounting
- Removal of time limits.

Use of Land and Fees

The rules originally required the dedicated land or fees "to be used only for the purpose of providing park or recreational facilities accessible to the development."

The new rules of 2014 state that:

> The land or fees, or combination thereof, are to be used only for the purpose of providing, **acquiring, operating or maintaining** park or recreational facilities **reasonably** accessible to the development. [emphasis added]

In other words, under the new rules, municipalities are clearly authorized to use fees not only for acquisition and development of facilities but also for operations and maintenance.

Accounting

The original rules required municipalities to deposit the fees in an interest-bearing account:

> clearly identifying the specific recreation facilities for which the fee was received.... 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.

The 2014 rules only require that the fees be placed in an interest-bearing account:

> clearly identified as reserved for providing, acquiring, operating or maintaining park or recreational facilities.

The intent of this change appears to be to provide municipalities flexibility in banking and accounting for fees while still requiring that any particular fee be used to support the development that generated it.

Removing Time Limit

The rules previously required municipalities to refund any fees that that they failed to use for an allowed purpose within three years of receipt. The 2014 rules instead only require that:

> 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 used the fee paid, for a purpose other than the purposes set forth in this section.

There is no time limit for expending collected fees.

Planning needed to establish defensible requirements

Although there has been little or no litigation relating to the public dedication provisions 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[6] 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*,[7] 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

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

[5] House Bill 1052 (printer's no. 3691) was signed into law as Act 135 on September 24, 2014.

[6] Passed in 1791.

[7] 43 U.S. 625 (1987)

proposed development.[8] In *Dolan v. City of Tigard*,[9] 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.[10]

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

Before imposing public dedication requirements and the alternatives on developers, a municipality (or adjoining municipalities operating on a regional basis[11]) must have several things in place:

- A formally adopted recreation plan;
- A subdivision and land development ordinance ("SALDO");[12] and
- Within the SALDO, a section providing for public dedication.

Recreation plan

Municipalities must prepare and adopt a 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 in the section "Dedicating Land for Public Parks and Recreation."

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

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[8] 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.

[9] 512 U.S. 374 (1994)

[10] 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.

[11] *See* Ch. 30, MPC

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

The DCNR publication Comprehensive Recreation, Park and Open Space Plan provides a good example of a scope of work for a comprehensive recreation plan.

Municipalities may separately adopt a joint park and recreation plan or incorporate a joint plan within a regional comprehensive plan.[13] The "Saucon Region Official Plan" (for Upper and Lower Saucon Townships in Lehigh and Northampton Counties, respectively) is an example of a multi-municipal comprehensive recreation plan.

Several small municipalities that operate on a joint basis incorporated a mini-recreation plan into the Southern Berks Regional Comprehensive Plan in 2015. 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. (The Southern Berks Regional Comprehensive Plan was most recently updated in 2020.)

Subdivision and land development ordinance

To take advantage of the public dedication provision of the MPC, municipalities need to have a SALDO, and the 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.

County SALDO

Some counties administer the SALDO for their local municipalities. In these situations, the local municipalities may need to persuade 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, for example, has a public dedication provision in its countywide SALDO. 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 to accept dedication of land, fees-in-lieu-thereof, or another alternative.

Only new plans

Public dedication requirements cannot be imposed retroactively 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

The MPC requires that a municipality's SALDO contain "definite standards" for determining the amount and location of land required to be dedicated (§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" (§503(11)(v)). Because these phrases and concepts (together with the phrase "reasonably accessible to the development," discussed later in the guide) are not defined in the MPC, municipalities have taken a variety of approaches to determine appropriate standards.

Determining how much parkland is needed

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 *Subdivision and Land Development in Pennsylvania*[14] 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.

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

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

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.[15] Although these population-based standards have been criticized by many planners as a cookie-cutter approach to planning (and were in fact dropped in subsequent 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.[16]

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, while many municipalities have no history of park acquisition, their residents still 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 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,

[15] *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.

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

> 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.[17]

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.

Community parks

Municipalities may seek to provide what the NRPA labels as *community parks*. Sometimes the showpiece of a municipality's park system, these parks may contain a growing variety of features: multiple sets of athletic fields and courts, playgrounds, open play areas, picnic pavilions, and even swimming pools. Often a municipality will have only one of these parks, but in larger communities several community parks may be provided. These tend to be the biggest municipal parks and may 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 may 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.

Neighborhood parks

Municipalities may seek to develop a series of *neighborhood parks* that are smaller and more closely integrated within residential areas. Here, limited open areas may 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 1 to 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.

Tot-lots, pocket parks and other small spaces

Municipalities may look to provide for *tot-lots* and *pocket parks* that place outdoor recreational spaces even closer to the doorsteps of users. These facilities typically 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. *Neighborhood gardens* are another of these small recreational spaces that can make a big difference in the quality of life in communities.

Linear parks

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

[17] Quoted at https://www.dcnr.pa.gov/about/Pages/State-Parks.aspx on 1/23/2024.

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*, 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 (section 835).

Parks with minimal improvements

Finally, some municipalities view 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.

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 §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. Many government agencies now 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.[18] Communities may wish to consider the complete streets approach when devising street design standards and parkland dedication or fees-in-lieu-thereof requirements.

Whether a SALDO may 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 is an unanswered question, at least to the authors' knowledge.

While the preceding types of parks all may 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.

Sample Schedule of Municipal Park Standards

[18] *See* https://smartgrowthamerica.org/what-are-complete-streets/

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 must be contributed

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).
- 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 0.0105 acres per person (10.5 ÷ 1,000 = 0.0105). Multiplying that number by 2.63 persons per household equals **0.028 acres (**1,220 sq. feet) **per household** (0.0105 x 2.63 = 0.028).

Adjusting the Calculation to Factor in Facilities:

If raw land was all that was needed to provide for local parks, then the 0.028 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 0.056 acres of parkland (0.028 x 2 = 0.056).

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.

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 other park use.

Municipalities may set different standards for active parkland versus natural or open space-oriented parks that do not require as much improvement; the latter's 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 0.0336 acres of parkland (0.028 x 1.2 = 0.0336).

However, in most cases the municipality will include at least some component of significantly improved parkland when adopting a public dedication ordinance. Upper and Lower Saucon Townships' Saucon Region Official Plan (pp. 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, section 320-53 ("Community facilities, park land and open space") of the North Coventry Township (Chester County) SALDO. 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 to the new development?

The MPC requires that the dedicated land must be *reasonably accessible* to the 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 (§§503(11)(iii), (v)).

NRPA guidelines may 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.[19]

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

[19] The following are municipalities that have implemented a park service district approach:

City of Allentown, Lehigh County
East Hempfield Township, Lancaster County
Lampeter-Strasburg Region: Strasburg Borough and Strasburg and West Lampeter Townships, Lancaster County
Manheim Central Region: Manheim Borough and Penn and 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

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." 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 may use public dedication or fees-in-lieu 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 may be applied towards that linear park.

Fees-In-Lieu of Dedication

With a well-drafted ordinance in place, public dedication of land may be *required* 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 *choose to ask* the developer for the alternative and the developer *may consent or not.*

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 seeks to protect natural and cultural features 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 may save these fees until enough capital has been accumulated to purchase the targeted parkland. Alternatively, the fees-in-lieu of parkland may be used to provide infrastructure or buy recreational equipment for new parks; make improvements to existing facilities; or operate or maintain facilities. The sites must be reasonably accessible to the development generating the fees.

How much may be charged as a fee-in-lieu?

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" (§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 (§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.[20] 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 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 may 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 accounting

Fees-in-lieu must be deposited into an interest-bearing account that is clearly identified as reserved for providing, acquiring, operating, or maintaining park or recreational facilities. (§503(11)(vi))

The municipality should exercise caution so as not to lose track of what development has generated what fee deposits. It needs a system to account for the money since the law requires that fees be used for facilities reasonably accessible to the specific development that generates the revenue.

Interest earned on the account becomes part of the account. In other words, it is subject to the same restrictions on purpose as the original fees. (§503(11)(vi))

Refunds

Municipalities are not subject to a time limit for using fees. However, if a municipality uses a fee for a purpose other than the allowed uses, any person who paid the fee may request a refund. (§503(11)(vii))

Fees-in-lieu may be incentivized

Both the municipality and the developer must agree in order to pursue the fee-in-lieu option instead of land

[20] 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. (§610.04.)

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.

Municipalities may 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.

Additionally 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.) This deferral could be of great interest to a developer concerned with cash flow. The municipality could further incentivize the fee alternative by tying fee payment to when the developer can expect significant revenue—such as when occupancy permits are granted.

The downside of this approach for municipalities is that multiple payments require a higher level of administrative attention.

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

Documenting a choice of fee-in-lieu

Assuming that a municipality, at least in some cases, will prefer a fee in lieu of a public dedication of land, the municipality will want to establish a form for documenting the developer's choice to voluntarily select a fee-in-lieu. In a 1992 article, Diane W. Kripas suggests the following text for a form:[21]

> 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 _____. 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.

Option to Construct Recreational Facilities

Again, only public dedication may 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 cost effective for both the municipality and developer to have contractors already working on site preparation prepare and grade a nearby municipal athletic field while their equipment is in the vicinity. Likewise, contractors might be able to pour foundations and construct improvements programmed for the proposed park. Developers often welcome such opportunities, as they can

[21] Diane W. Kripas, CLP, "Mandatory Dedication – Just One Source of Many," *Pennsylvania Recreation and Parks* (Spring 1992), pp. 17-19.

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.

Option for Private Reservation

The municipality and developer may agree, in full or partial replacement of the public dedication requirement, to 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 reserved tract. 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 park and recreation facility to be established on the reserved tract.

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 have little or no say regarding the management of the facility, the facility will not be eligible for state-funded park improvement grants, and—depending on the municipality-developer agreement—people who don't live in the development may not be permitted to use the facility.

As with the previous two alternatives, the municipality may make this option available to developers but may not mandate its use.

Homeowners associations are not the only entities suitable for owning and managing a private reservation. Municipalities may approve the transfer of ownership of private reservation lands to other 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. A minimally developed nature-based park hosting a threatened species might be a good candidate for ownership and maintenance by a local conservancy. 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 substitute public dedication of land requirements partially or fully 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 the 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 SALDO to provide public dedication

Like any ordinance to be adopted by a municipality under the MPC, local officials should carefully consider proposed subdivision and land development ordinance revisions with professional guidance from community planners, whether in-house or consultants, and solicitors. In the case of public dedication provisions, park and recreation professionals also should be engaged. 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.

Working cooperatively with developers

The subdivision and land development review process does not have to be a battle between the municipality and the developer. In her 1992 article, Kripas suggests steps that municipalities can take to work more collaboratively with developers to get the most out of their public dedication ordinances:[22]

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.

Consider using other revenue to buy the most suitable parkland and providing developers a list of desired capital improvement projects for that land.

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 your suggestions are to make it into the final plan. 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.

[22] Kripas, 1992. The remainder of this subsection was excerpted from the article and adapted for this guide with the permission of the author.

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.

Multi-municipal planning

Some municipalities work together to prepare regional recreation plans and then implement these plans through their 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 may 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 may be utilized on a regional level, but land acquired or fees collected for a municipal-level park would need to be utilized 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.)

Application to non-residential development

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 may 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* §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 ties 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 0.056 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.

Safeguards when land is held by another party

When parkland is to be privately reserved or dedicated and owned by a party other than the municipality, the municipality should require legal safeguards—likely involving conservation easements, access easements or deed restrictions—to ensure that the lands are held and managed in perpetuity for park and recreation purposes. Local solicitors should carefully evaluate such arrangements prior to their execution.

Locating expert assistance

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

- Community planners who are members of the American Institute of Certified Planners (AICP);
- Attorneys with knowledge of community planning issues;
- Certified Park and Recreation Professionals;
- Pennsylvania Chapter of the American Planning Association;
- The expert listings at the WeConservePA Library.

Municipalities can reach out to the DCNR Bureau of Recreation and Conservation to explore the possibility of a grant to help develop a park and recreation plan or to prepare a public dedication ordinance. More information, including contact information for DCNR regional recreation and parks advisors, is available at the Bureau of Recreation and Conservation webpage.

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