

THE TOWNSHIP Planner



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Know Your Limits

Townships Should Tread Carefully When Levying Land Use Fees

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When an applicant enters a township building with a plan, whether it's to build an addition, create a subdivision, or construct a shopping center, he probably already knows that he needs to obtain permits and approvals — and that these permits and approvals are not free.

While the public generally accepts and expects these charges, township officials should not take land use fees lightly because abuse of this power, no matter how unintentional, could prove costly.

Township officials need to understand their legal limitations in imposing fees and

the steps they can take to protect their municipality from challenges.

Application fees

In general, Pennsylvania law allows townships to charge “reasonable” application fees to offset the costs incurred in administering a permit or an approval. That power, however, is not unlimited.

Essentially, a township may not intentionally profit from an application fee. Reasonable fees are commensurate with the actual cost to perform the services. For example, if it costs the township \$150 to review a plan before issuing a zoning permit, that is the fee it must impose on applicants — nothing more, nothing less.

A township's power to charge application fees for hearings before the zoning hearing board is subject to additional restrictions, which are outlined in the Municipalities Planning Code, the governing statute for land use and zoning in Pennsylvania.

According to the MPC, hearing fees



If you haven't taken a close look at your township's land use fees in awhile, now is the time. Without careful consideration and documented justification, these often-overlooked fees could be the source of a costly legal challenge.

may not include expenses related to legal, engineering, architectural, and other technical consultants or for expert witnesses. The MPC also provides specific rules about the payment of stenographers and transcript costs. The Uniform Construction Code places similar limits on hearing fees for the UCC board of appeals.

Regardless of whether an application

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QUESTIONS AND Answers

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Q. Are townships required to have planning commissions?

A. No, this is an optional authority that townships may form under Section 201 of the Municipalities Planning Code: “The governing body of any municipality shall have the power to create or abolish, by ordinance, a planning commission or planning department, or both.”

If a township has a subdivision and land development ordinance or a zoning ordinance, it should consider forming a planning commission to help manage the additional responsibilities, such as reviewing plans and ordinance amendments.

Q. May the township supervisors serve on the planning commission?

A. Yes, according to the Municipalities Planning Code. However, because of Sunshine Law considerations, PSATS recommends against having more than one supervisor on the planning commission from a three-member board and no more than two from a five-member board. Having a quorum of supervisors serving on the planning commission raises the question: Is this a planning commission or a board of supervisors’ meeting?

Also, limiting the number of township supervisors on the planning commission reinforces the fact that the commission is an advisory panel created to assist the board of supervisors on land use matters.

Section 202 of the MPC states that planning commissions must have at least three but no more than nine members who, except those who are elected or appointed officials or township employees, may be paid. The board of supervisors establishes the rate of compensation, which may not exceed the supervisors’ pay rate. Without exception, planning commission members may be reimbursed for necessary and reasonable expenses.

Q. May the township remove planning commission members midterm?

A. Generally, no. Sections 203(b) and (c) of the Municipalities Planning Code provide for the terms of planning commission members, while Section 206 provides for the removal. Any board of supervisors considering removing a planner should consult with the township solicitor to determine how to proceed.

Section 203(b) of the MPC states that planning commission members are appointed to four-year terms. On new planning commissions, however, the terms must be staggered to ensure that no more than two members are reappointed or replaced each year on commissions with eight or fewer members and no more than three are reappointed or replaced on nine-member commissions.

Section 203(d) states that if a township wants to reduce the number of members on an existing planning commission, the supervisors must allow the terms to expire and not fill the vacancies. The supervisors must pass an ordinance if they intend to reduce or increase the size of the planning commission.

Section 206, however, states that “any member of a planning commission, once qualified and appointed, may be removed from office for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of the governing body taken after the member has received 15 days’ advance notice of the intent to take such a vote.” The planning commission member may request a hearing in writing. The appointed successor would only serve the remainder of the unexpired term. ♦

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Want to know more about developing a comprehensive plan? Need some guidance on drafting a subdivision ordinance? Need to know the advertising requirements for a zoning hearing board meeting?

Help is available from PSATS, which sponsors the Township Planning Association for local planning commissions and zoning hearing boards, and from the Governor’s Center for Local Government Services, which coordinates the state’s land use efforts.

HERE’S HOW TO GET IN TOUCH:

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