

Part I: Administrative Legislation

GENERAL PROVISIONS

Chapter 1

GENERAL PROVISIONS

ARTICLE I
Adoption of Code
[Adopted 11-9-2017 by Ord. No. 4-2017]

§ 1-1. Approval, adoption and enactment of Code.

Pursuant to Section 3301.5 of the Borough Code (8 Pa.C.S.A. § 3301.5), the codification of a complete body of legislation for the Borough of Dalton, County of Lackawanna, Commonwealth of Pennsylvania, as revised, codified and consolidated into chapters, articles and sections by General Code, and consisting of Chapters 1 through 400, together with an Appendix, is hereby approved, adopted, ordained and enacted as a single ordinance of the Borough of Dalton, which shall be known and is hereby designated as the "Code of the Borough of Dalton," hereinafter referred to as the "Code."

§ 1-2. Effect of Code on previous provisions.

The provisions of this Code, insofar as they are substantively the same as those of ordinances and resolutions in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinance or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Borough Council of the Borough of Dalton, and it is the intention of said Borough Council that each such provision contained within the Code is hereby reenacted and reaffirmed as it appears in said Code. Only such provisions of former ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below, and only new or changed provisions, as described in § 1-6 below, shall be deemed to be enacted from the effective date of this Code, as provided in § 1-15 below.

§ 1-3. Inconsistent legislation repealed.

- A. Repeal of inconsistent ordinances. Except as provided in § 1-4, Legislation saved from repeal; matters not affected by repeal, below, all ordinances or parts of ordinances inconsistent with the provisions contained in the Code adopted by this ordinance are hereby repealed as of the effective date given in § 1-15; provided, however, that such repeal shall only be to the extent of such inconsistency, and any valid legislation of the Borough of Dalton which is not in conflict with the provisions of the Code shall be deemed to remain in full force and effect.
- B. Repeal of specific ordinances. The Borough Council of the Borough of Dalton has determined that the following ordinances are no longer in effect and hereby specifically repeals the following legislation:
 - (1) Ordinance No. 3-1975, Peace and Good Order: disorderly conduct, adopted May 8, 1975.
 - (2) Ordinance No. 7-1998, Holding Tanks, adopted September 14, 1978.
 - (3) Ordinance No. 3-1985, Driveways, adopted March 14, 1985.
 - (4) Ordinance No. 5-1986, Swimming Pools, adopted October 9, 1986.

(5) Ordinance No. 3-1989, Pornography, adopted September 14, 1989.

§ 1-4. Legislation saved from repeal; matters not affected by repeal.

The adoption of this Code and the repeal of ordinances provided for in § 1-3 of this ordinance shall not affect the following ordinances, rights and obligations, which are hereby expressly saved from repeal; provided, however, that the repeal of ordinances pursuant to § 1-3 or the saving from repeal of ordinances pursuant to this section shall not be construed so as to revive any ordinance previously repealed, superseded or no longer of any effect:

- A. Any ordinance adopted subsequent to January 12, 2017.
- B. Any right or liability established, accrued or incurred under any legislative provision of the Borough prior to the effective date of this ordinance or any action or proceeding brought for the enforcement of such right or liability or any cause of action acquired or existing.
- C. Any offense or act committed or done before the effective date of this ordinance in violation of any legislative provision of the Borough or any penalty, punishment or forfeiture which may result therefrom.
- D. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this ordinance, brought pursuant to any legislative provision of the Borough.
- E. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Borough or any lawful contract, obligation or agreement.
- F. Any ordinance appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Borough or other instruments or evidence of the Borough's indebtedness.
- G. Any ordinance adopting an annual budget or establishing an annual tax rate.
- H. Any ordinance providing for the levy, imposition or collection of special taxes, assessments or charges.
- I. Any ordinance authorizing the purchase, sale, lease or transfer of property or acquiring property by acceptance of deed, condemnation or exercise of eminent domain.
- J. Any ordinance annexing land to the Borough.
- K. Any ordinance providing for or requiring the construction or reconstruction or opening of sidewalks, curbs and gutters.
- L. Any ordinance or part of an ordinance providing for laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, sidewalk, park or other public place or property or designating various streets as public highways.

- M. Any ordinance establishing water, sewer or other special purpose districts and designating the boundaries thereof; providing for a system of sewers or water supply lines; or providing for the construction, extension, dedication, acceptance or abandonment of any part of a system of sewers or water supply lines.
- N. Any ordinance providing for the making of public improvements.
- O. Any ordinance providing for the salaries and compensation of officers and employees of the Borough or setting the bond of any officer or employee.
- P. Any ordinance concerning changes and amendments to the Zoning Map.
- Q. Any ordinance relating to or establishing a pension plan or pension fund for municipal employees.
- R. Any ordinance or portion of an ordinance establishing a specific fee amount for any license, permit or service obtained from the Borough.
- S. Any currently effective ordinance providing for intergovernmental cooperation or establishing an intermunicipal agreement.
- T. Any traffic and parking regulations adopted by the Borough.

§ 1-5. Inclusion of new legislation prior to adoption of Code.

All ordinances of a general and permanent nature adopted subsequent to the date given in § 1-4A and/or prior to the date of adoption of this ordinance are hereby deemed to be a part of the Code and shall, upon being printed, be included therein. Attested copies of all such ordinances shall be temporarily placed in the Code until printed supplements are included.

§ 1-6. Changes and revisions in previously adopted legislation; new provisions.

- A. Nonsubstantive changes. In compiling and preparing the ordinances and resolutions of the Borough for adoption and revision as part of the Code, certain nonsubstantive grammatical and style changes were made in one or more of said ordinances and resolutions. It is the intention of the Borough Council that all such changes be adopted as part of the Code as if the ordinances and resolutions so changed had been previously formally amended to read as such.
- B. Nomenclature. The following terms where they appear in the Code have been updated as indicated:
 - (1) “Justice of the Peace,” “District Justice,” “Magistrate District,” “Magistrate District Judge or “Magistrate” changed to “Magisterial District Judge.”
 - (2) “Department of Community Affairs” changed to “Department of Community and Economic Development.”
 - (3) U.S. Department of Agriculture’s “Soil Conservation Service (SCS)” changed to “Natural Resources Conservation Service (NRCS).”
 - (4) “Department of Environmental Resources” or DER changed to “Department of Environmental Protection” or DEP (or “Department of Conservation and

Natural Resources,” if appropriate).

- (5) “Enforcement Officer, Zoning Enforcement Officer,” “Building Officer” and “Code Enforcement Officer” changed to “Zoning Officer.”
- (6) “Fireman” and “firemen” changed to “firefighter” and “firefighters.”
- C. Statutory references. Pursuant to recodification of the Borough Code in 2012 and 2014 (see now 8 Pa.C.S.A. § 101 et seq.), statutory citations referring to specific sections of the Borough Code have been updated accordingly throughout the Code.
- D. Substantive changes and revisions. In addition to the changes and revisions described above, changes and revisions of a substantive nature, as set forth in Schedule A attached hereto and made a part hereof, are hereby made to various ordinances and resolutions included in the Code. These changes are enacted to bring provisions into conformity with the desired policies of the Borough Council, and it is the intent of the Borough Council that all such changes be adopted as part of the Code as if the legislation so changed had been previously formally amended to read as such. All such changes and revisions shall be deemed to be in effect as of the effective date of the Code specified in § 1-15.¹

§ 1-7. Interpretation of provisions.

In interpreting and applying the provisions of the Code, they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience and general welfare. Where the provisions of the Code impose greater restrictions or requirements than those of any statute, other ordinance, resolution or regulation, the provisions of the Code shall control. Where the provisions of any statute, other ordinance, resolution or regulation impose greater restrictions or requirements, the provisions of such statute, other ordinance, resolution or regulation shall control.

§ 1-8. Titles and headings; editor's notes.

- A. Chapter and article titles, headings and titles of sections and other divisions in the Code or in supplements made to the Code are inserted in the Code and may be inserted in supplements to the Code for the convenience of persons using the Code and are not part of the legislation.
- B. Editor's notes indicating sources of sections, giving other information or referring to the statutes or to other parts of the Code are inserted in the Code and may be inserted in supplements to the Code for the convenience of persons using the Code and are not part of the legislation.

§ 1-9. Filing of copy of Code.

At least one copy of the Code in a post-bound volume shall be filed with the Ordinance Book in the office of the Borough Secretary and shall remain there for use and

1. Editor's Note: In accordance with § 1-6D, the chapters, parts and sections which were added, amended, adopted or deleted by this ordinance are indicated throughout the Code by a footnote referring to Chapter 1, General Provisions, Article I. During routine supplementation, footnotes indicating amendments, additions or deletions will be replaced with the following history: “Amended (added, deleted) 11-9-2017 by Ord. No. 4-2017.” Schedule A, which contains a complete description of all changes, is on file in the Borough offices.

examination by the public. Upon adoption, such copy or copies shall be certified to by the Borough Secretary, as provided by law, and such certified copy or copies shall remain on file in the office of the Borough Secretary, available to persons desiring to examine the same during all times while said Code is in effect.

§ 1-10. Amendments to Code.

Any and all additions, deletions, amendments or supplements to the Code, when passed and adopted in such form as to indicate the intention of the Borough Council to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such changes. Whenever such additions, deletions, amendments or supplements to the Code shall be adopted, they shall thereafter be printed and, as provided hereunder, inserted in the post-bound book containing said Code as amendments and supplements thereto.

§ 1-11. Code books to be kept up-to-date.

It shall be the duty of the Borough Secretary or someone authorized and directed by him or her to keep up-to-date the certified copy or copies of the book containing the Code required to be filed in the office of the Borough Secretary for the use of the public. All changes in said Code and all legislation adopted by the Borough Council subsequent to the effective date of this codification which the Borough Council shall adopt specifically as part of the Code shall, when finally adopted, be included therein by reference until such changes or new legislation are printed as supplements to said Code books, at which time such supplements shall be inserted therein.

§ 1-12. Publication of notices.

The Borough Secretary, pursuant to law, shall cause to be published in the manner required a notice of the introduction and of the adoption of the Code in a newspaper of general circulation in the Borough. The enactment and application of this ordinance, coupled with the publication of the notice of introduction, the availability of a copy or copies of the Code for inspection by the public and the filing of an attested copy of this ordinance with the county, as required by law, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 1-13. Altering or tampering with Code; violations and penalties.

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, or to alter or tamper with the Code or any part or portion thereof in any manner whatsoever which will cause the law of the Borough to be misrepresented thereby. Any person who violates or permits a violation of this section of this ordinance shall, upon being found liable therefor in a civil enforcement proceeding, pay a fine of not more than \$600, plus all court costs, including reasonable attorneys' fees, incurred by the Borough in the enforcement of this chapter. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense. Further, the appropriate officers or agents of the Borough are hereby authorized to seek equitable relief, including injunction, to enforce compliance herewith.

§ 1-14. Severability.

The provisions of this ordinance and of the Code adopted hereby are severable, and if any clause, sentence, subsection, section, article, chapter or part thereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation and application to the clause, sentence, subsection, section, article, chapter or part thereof rendered illegal, invalid or unconstitutional. It is hereby declared to be the intent of the Borough Council that this ordinance and the Code would have been adopted if such illegal, invalid or unconstitutional clause, sentence, subsection, section, article, chapter or part thereof had not been included therein.

§ 1-15. Effective date.

All provisions of this ordinance and of the Code shall be in force and effect on and after November 9, 2017.

Chapter 64

PENSIONS

[All pension plan ordinances and agreements are on file and available for review in the Borough offices during regular business hours.]

Chapter 69

POLICE DEPARTMENT

ARTICLE I
Warrantless Arrests
[Adopted 2-11-1999 by Ord. No. 2-1999]

§ 69-1. Arrest without warrant.

The Borough of Dalton does hereby authorize its municipal officers to arrest without warrant under the provisions of 42 Pa. C.S.A. § 8902 as established by the legislature of the Commonwealth of Pennsylvania as follows:

- A. General rule. For any of the following offenses, a police officer shall, upon view, have the right of arrest without warrant upon probable cause when there is ongoing conduct that imperils the personal security of any person or endangers public or private property:
 - (1) Under Title 18 (relating to crimes and offenses) when such offense constitutes a summary offense:
 - (a) 18 Pa. C.S. § 5503 (relating to disorderly conduct);
 - (b) 18 Pa. C.S. § 5505 (relating to public drunkenness);
 - (c) 18 Pa. C.S. § 5507 (relating to obstructing highways and other public passages);
 - (d) 18 Pa. C.S. § 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages); or
 - (e) Violation of an ordinance of a city of the second class.
- B. Guidelines by governmental body. The right of arrest without warrant under this section shall be permitted only after the governmental body employing the police office promulgates guidelines to be followed by a police officer when making a warrantless arrest under this section.

§ 69-2. Guidelines.

In accordance with 42 Pa.C.S.A. § 8902(b), the Borough of Dalton does hereby promulgate these guidelines to be followed by police officers of the Borough of Dalton when making a warrantless arrest under this empowering statute. These guidelines are as follows:

- A. A police officer shall have the right to arrest without warrant for certain summary criminal offenses if the following conditions are met:
 - (1) The officer must have probable cause to believe that the defendant has committed one of the following summary offenses under Title 18:
 - (a) 18 Pa. C.S. § 5503 (relating to disorderly conduct);
 - (b) 18 Pa. C.S. § 5505 (relating to public drunkenness);
 - (c) 18 Pa. C.S. § 5507 (relating to obstructing highways and other public passages);

- (d) 18 Pa. S.C. § 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages).
- (2) The officer must make a determination as to whether there is ongoing conduct that imperils the personal security of any person or endangers public or private property.
- (3) This determination must be made in good faith based on the officer's personal observations. The officer should consider:
 - (a) The condition of the defendant;
 - (b) The circumstances surrounding the incident;
 - (c) The likelihood that the conduct will persist if the defendant is not placed under arrest;
 - (d) The likelihood that the conduct, if it persists, would endanger the defendant or any other person; and
 - (e) The likelihood that the conduct, if it persists, might result in damage to public or private property.
- (4) If, based on the foregoing factors, the officer determines that the defendant should be placed under arrest, the officer should follow standard policy and procedure for making such an arrest and transporting the defendant. (Refer to current policy or procedure.)
- (5) Where a defendant in such a situation is determined to be a juvenile, the officer should follow standard policy and procedure for arrest, transport and notification in juvenile cases. (Refer to current policy and procedure for juvenile cases.)
- (6) If a defendant is placed under arrest for a summary offense under these guidelines, the officer must then follow the mandates of Rule 71 of the Pennsylvania Rules of Criminal Procedure, Procedure Following Arrest Without Warrant. The rule states:
 - (a) When a defendant has been arrested without warrant, the defendant shall be either released from custody pursuant to Subsection A(6)(b)[1][b] or taken before the proper issuing authority under Subsection A(6)(b)[1][c].
 - (b) Release of defendant.
 - [1] When a defendant has been arrested without a warrant, the arresting officer may, when the officer deems appropriate, promptly release the defendant from custody when the following conditions have been met:
 - [a] The defendant is a resident of the Commonwealth;
 - [b] The defendant poses no threat of immediate physical harm to any other person or to himself or herself;

- [c] The arresting officer has reasonable grounds to believe that the defendant will appear as required; and
 - [d] The defendant does not demand to be taken before an issuing authority.
- [2] A citation shall be issued to the defendant at the time of the release, and thereafter, the case shall proceed in accordance with Rules 55-59 as if the proceedings had been instituted by issuing a citation to the defendant.
- (c) When the defendant has not been released from custody under Subsection A(6)(b)[1][b], the defendant shall be taken without unnecessary delay before the issuing authority where a citation shall be filed against the defendant. The defendant shall be given an immediate trial unless:
- [1] The Commonwealth is not ready to proceed or the defendant requests a postponement and, in either event, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial; or
 - [2] The defendant's criminal record must be ascertained before trial as specifically required by statute for purpose of grading the offense charged, in which event, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial which shall be after the issuing authority's receipt of the required information.

§ 69-3. Authority.

This article is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, 1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

Chapter 82

RECORDS

ARTICLE I
Open Records Policy
[Adopted 2-13-2003 by Ord. No. 5-2003]

§ 82-1. Definitions.²

The words and phrases used herein shall have the meanings given to them in Act 3 of 2008, the Right to Know Law, codified at 65 P.S. § 67.101 et seq.

§ 82-2. Procedure for access to public records.

- A. General rule. Unless otherwise provided by law, a public record of the Borough of Dalton shall be available for inspection and duplication by a requester in accordance with this article and the Right to Know Law. A public record shall be provided to a requester in the medium requested if the public record exists in that medium; otherwise, the record shall be provided in the medium in which it exists. If access to a public record is routinely available by the Borough only by electronic means, the Borough shall provide access to inspect the public record at the Borough office. Public records shall be available for access during the regular business hours of the Borough. Nothing in this article shall provide for access to a record which is not a public record.
- B. Requests. Requests for records shall be in writing and directed to the Borough Secretary or the Secretary's designee, at the Borough Building, Main Street, Dalton, PA 18414. No verbal or anonymous requests for records shall be fulfilled. Written requests may be submitted in person, by mail or by facsimile, and shall identify or describe the record or records with sufficient specificity to enable the Secretary to ascertain which records are being requested. The written request shall include the name and address to which the Secretary should address the response. A written request need not include any explanation for the requester's reason for the request or the requester's intended use of the records. In the event that a requester wishes to pursue the relief and remedies provided for in this article, or as provided for in the Right to Know Law, the requester must initiate such relief with a written request.
- C. Creation of a public record. When responding to a request for access, the Borough shall not be required to create a public record which does not currently exist or to compile, maintain, format or organize a public record in a manner in which the Borough does not currently compile, maintain, format or organize a public record.
- D. Conversion of an electronic public record to paper. If a public record is only maintained by the Borough electronically or in other nonpaper media, the Borough shall, upon request, duplicate the public record on paper when responding to a request.

§ 82-3. Access to public records.

The Borough may not deny a requester access to a public record due to the intended use of the public record by the requester.

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 82-4. Redaction.

If the Borough determines that a public record contains information which is subject to access as well as information which is not subject to access, the Borough's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record and cannot be separated, the Borough shall redact from the public record that information which is not subject to access and grant access to the information which is subject to access. The Borough may not deny access to the public record if the information which is not subject to access is able to be redacted. Information that the Borough redacts in accordance with this section shall be deemed a denial under § 82-5.

§ 82-5. Borough response to written requests for access.

- A. General rule. Upon receipt of a written request for access to a record, the Borough shall make a good faith effort to determine if the record requested is a public record and respond to the request as promptly as possible under the circumstances existing at the time of the request but shall not exceed five business days from the date the written request is received by the Borough Secretary or the Secretary's designee. If the Borough fails to send the response within five business days from receipt of the request, the request shall be deemed denied.
- B. Exceptions. Upon receipt of a written request for access, if the Borough determines that one of the following applies: the request for access requires redaction of a public record in accordance with § 82-4; the request for access requires the retrieval of a record stored in a remote location; a timely response to the request for access cannot be accompanied due to bona fide and specified staffing limitations; a legal review is necessary to determine whether the record is a public record subject to access under this article or the Right to Know Law; the requester has not complied with the Borough's policies regarding access to public records; or the requester refuses to pay applicable fees authorized by § 82-8; the Borough shall send written notice to the requester within five business days of the Borough's receipt of the request notifying the requester that the request for access is being reviewed, the reason for the review and a reasonable date that a response is expected to be provided. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed in § 82-5A, the request for access shall be deemed denied.
- C. Denial. If the Borough denies a written request for access, whether in whole or in part, the Borough's written response shall include:
 - (1) A description of the record requested;
 - (2) The specific reasons for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that the record requested is not a public record, the specific reasons for the Borough's determination that the record is not a public record shall be included;
 - (3) The typed or printed name, title, business address, business telephone number and signature of the public official or public employee on whose authority the

denial is issued;

(4) The date of the response;

(5) The procedure to appeal the denial of access under this article or the Right to Know Law.

D. Certified copies. If the Borough grants a request for access, the Borough, upon request, shall provide the requester with a certified copy of the public record; provided that the requester pays the applicable fees pursuant to § 82-8.

§ 82-6. Final Borough determination.

A. Filing of exceptions. If a written request for access is denied or deemed denied, the requester may file exceptions with the (Borough Manager/Borough Secretary/Borough Council) within 15 days of the date of mailing of the response or within 15 days of a deemed denial. The exceptions shall state the grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the agency for delaying or denying the request.

B. Determination. Unless the requester agrees otherwise, the Borough Council shall make a final determination regarding the exceptions within 30 days of the mailing date of the exceptions. Prior to issuing the final determination regarding the exceptions, the Borough Council may conduct a hearing. The determination shall be the final order of the Borough. If the Borough Council determines that the request for access was correctly denied, then the Borough shall provide a written explanation to the requester of the reason for the denial.

§ 82-7. Judicial appeal.³

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records or judicial, legislative or other appeals officer designated under 65 P.S. § 67.503(d) within 15 business days of the mailing date of the agency's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.

§ 82-8. Fees.

A. Postage. The Borough may impose a fee for postage, which may not exceed the actual prevailing cost of mailing.

B. Duplication. The Borough may charge a fee for duplication of public records at reasonable rates based on prevailing fees and rates for comparable duplication services provided by local business entities.

C. Limitation of fees. Except as provided hereinabove, or as otherwise provided by statute, no other fees may be imposed, unless the Borough necessarily incurs costs for complying with the request, and such fees must be reasonable.

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- D. Prepayment of fees. The Borough shall require prepayment of fees if the cost of complying with the request exceeds \$100.
- E. Waiver of fees. The Borough may waive the fees for duplication of a public record, including, but not limited to, when:
 - (1) The requester duplicates the public record; or
 - (2) The Borough deems it is in the public interest to do so.

§ 82-9. Miscellaneous.

Borough Council shall adopt a policy, and may from time to time amend such policy as necessary to implement this article and to comply with the Right to Know Law. The Borough shall post the Open Records Policy in a conspicuous place in the office of the Borough Building.

§ 82-10. Authority.

This article is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

Chapter 93

SALARIES AND COMPENSATION

ARTICLE I
Council Members
[Adopted 12-30-1977 by Ord. No. 7-1977]

§ 93-1. Compensation.

The compensation of the Councilmen of the Borough of Dalton is established at \$30 per month per Councilman.

§ 93-2. Commencement of compensation.

The payment is to commence with the month of January 1978.

ARTICLE II
Tax Collector
[Adopted 2-12-1981 by Ord. No. 3-1981]

§ 93-3. Compensation.

The compensation of the Real Estate Tax Collector of Dalton Borough is established at \$1,000 per year.

§ 93-4. Effective date.

This Article II is effective January 1, 1982.

Part II: General Legislation

Chapter 127**ADULT USES****GENERAL REFERENCES**

Peace and good order — See Ch. 259.

§ 127-1. Offense defined.

- A. No person shall knowingly or intentionally, in a public place:
- (1) Engage in sexual intercourse;
 - (2) Appear in a state of nudity;
 - (3) Engage in deviate sexual conduct as defined in the Pennsylvania Crimes Code;
 - (4) Fondle the genitals of himself or herself or another person;
 - (5) Commit any other lewd, immoral or improper act as defined hereinafter.
- B. No establishment licensed to sell or serve alcoholic liquors or alcoholic or malt or brewed beverages, or establishments known as bottle clubs, or any establishment of any kind where alcoholic liquors or alcoholic or malt or brewed beverages are sold, served or consumed on the premises, or the operators, servants, agents, or employees of the same, shall knowingly permit on the premises of such establishment or in any place operated in connection therewith any lewd, immoral or improper acts or conduct as described herein below.
- C. No establishment of any kind, or the operators, servants, agents, or employees of the same, shall knowingly permit on the premises of such establishment or in any place operated in connection therewith any erotic dancing or nude dancing, unless the following restrictions are adhered to:
- (1) No person shall perform any nude or erotic dancing within 20 feet of any patrons.
 - (2) No person performing any nude or erotic dancing shall have any physical contact, including but not limited to lap dancing or other similar acts, with any patron or any other person, or other dancer or performer, before during or after any performance, or at any time on the premises. This section shall include simulation.
 - (3) No person shall perform any nude or erotic dancing for the payment of money or other value or consideration or gratuity from any patron or any other person at any time on the premises, other than the employer of said nude or erotic dancer.
 - (4) No person shall perform any nude or erotic dancing before 10:00 p.m. or after

1:00 a.m.

- (5) No person or establishment shall knowingly exhibit for monetary consideration to a minor or knowingly sell to a minor an admission ticket or pass or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture show, or nude or erotic dancing or other presentation or performance which, in whole or in part, depicts nudity or sexual conduct and which is harmful to minors.
- (6) No person or other establishment shall employ or use any person in the sale and service of alcoholic beverages while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the anatomy described in § 127-2, definition of "lewd, immoral or improper acts or conduct," Subsection C.
- (7) No nude or erotic dancing shall be performed at any establishment that is located within 500 feet of any private residence, church, public park, public building or school.
- (8) No person shall perform and no establishment of any kind shall permit on the premises any of the acts or conduct set forth in § 127-2, definition of "lewd, immoral or improper acts or conduct," Subsections A, B, D, G, I, and J, of this chapter.

§ 127-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BOTTLE CLUB — An establishment operated for profit or pecuniary gain, which admits patrons upon a payment of a fee, has a capacity of the assemblage of 20 or more persons, and in which alcoholic liquors, alcohol or malt or brewed beverages are not legally sold, but where alcoholic liquors, alcohol or malt or brewed beverages are either provided by the operator or agents or employees of the operator for consumption on the premises, or are brought into or kept at the establishment by the patrons or persons assembling there for use and consumption. The term shall not include a licensee under the Act of April 12, 1951 (P.L. 90, No. 21), known as the Liquor Code, or any organization as set forth in Section 6 of the Act of December 19, 1990 (P.L. 1200, No. 202), known as the Solicitation of Funds for Charitable Purposes Act. **[Amended 10-11-2007 by Ord. No. 6-2007]**

HARMFUL TO MINORS — That quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement when it:

- A. Predominately appeals to the prurient, shameful or morbid interest of minors; and
- B. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- C. Taken as a whole, lacks serious literary, artistic, political, educational or scientific value for minors.

KNOWINGLY — Having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both:

- A. The character and content of any material or performance described herein which is reasonably susceptible of examination by the defendant; and
- B. The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

LEWD, IMMORAL OR IMPROPER ACTS OR CONDUCT — Includes, but is not limited to, the following acts of conduct:

- A. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or excretion or any sexual acts which are prohibited by law.
- B. Any person being touched, caressed or fondled on the buttocks, anus, vulva, genitals or female breasts. This subsection includes simulation.
- C. Scenes wherein a person displays or exposes to view any portion of the pubic area, anus, cleft of the buttocks, vulva, genitals or any portion of the female breast directly or laterally below the top of the areola. This subsection includes simulation.
- D. Scenes wherein artificial devices or inanimate objects are employed to portray any of the prohibited activities described in Subsections A, B or C of this definition.
- E. Employment or use of any person in the sale and service of alcoholic beverages while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the anatomy described in Subsection C of this definition.
- F. Employment or use of the services of a person while the person is unclothed or in such attire as to expose to view any portion of the anatomy described in Subsection C of this definition.
- G. Permitting any person on the premises to touch, caress or fondle the buttocks, anus, vulva, genitals or female breasts of any other person.
- H. Permitting any person on the premises while such person is unclothed or in such attire as to expose to view any portion of the anatomy described in Subsection C of this definition.
- I. Permitting any person to wear or use any device or covering exposed to view which simulates the human buttocks, anus, vulva, genitals or female breasts.
- J. Permitting any person to show, display or exhibit on the premises any film, still picture, electronic reproduction or any other visual reproduction or image the content of which primarily depicts graphic sexual acts as described in Subsections A and D of this definition.

MINOR — Any person under the age of 18 years.

NUDITY — The showing of human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.

SEXUAL CONDUCT — Acts of masturbation, homosexuality, sexual intercourse, sexual bestiality or physical contact with a person's clothed or unclothed genitals, pubic

area, buttocks or, if such person be a female, breast.

SEXUAL EXCITEMENT — The condition of human male or female genitals when in a state of sexual stimulation or arousal.

§ 127-3. Violations and penalties.⁴

Any person who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this chapter and each day the same is continued shall be deemed a separate offense.

§ 127-4. Liability.⁵

In the event any of the unlawful and illegal activities specified herein are conducted by or in the name of a corporation, partnership, joint venture, trust, firm or association, in addition to (corporate) entity liability, the officers, agents or principals of said corporation, partnership, joint venture, trust, firm or association shall be deemed in violation of this chapter, as well as the person or persons engaged in the unlawful activity and upon conviction thereof, be guilty of a summary offense and sentenced to pay a fine of not more than \$1,000 and costs of prosecution and/or to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this chapter and each day the same is continued shall be deemed a separate offense.

§ 127-5. Abatement.

Any building or part of a building used in violation of this chapter is hereby declared to be a common nuisance. The Borough is hereby authorized to institute an action to enjoin any person or entity that is in violation of this chapter from continuing to operate his/its establishment in the Borough, and to enjoin any person or entity from committing any act which violates any provision of this chapter.

§ 127-6. Separate offenses.

The unlawful activities specified herein shall constitute separate and distinct offenses for each and every day in which said activities are conducted.

§ 127-7. Authority.

This chapter is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, § 1005, known as the Borough Code, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

5. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 131**ALARMS****§ 131-1. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

ACCIDENTAL FALSE ALARM — Any false alarm which is not an intentional false alarm as defined herein, or not when an intrusion, crime, fire or other emergency has actually occurred.

ALARM — Includes all automatic protection systems/devices, which are designed that upon receipt of a stimulus from a sensory apparatus that has detected a physical force or condition inherently characteristic of a fire or intrusion, and results in the activation of any audible warning device, or pre-recorded telephone message, the purpose of which is to alert and summon police, fire or other emergency personnel to respond to the location of the emergency. This definition also includes manually operated controls for a holdup alert or medical emergency.

ALARM DEVICE — A mechanical device designed to automatically transmit an alarm by wire, telephone, radio or other means:

- A. Directly to the Police Department;
- B. To a person who is instructed to notify the Police Department of the alarm; or
- C. To activate a bell or sounding device to be heard outside a building which is intended to alert the police or others to the existence of a crime, fire or other emergency situation warranting police action.

ALARM EQUIPMENT SUPPLIER — Any person, firm or corporation who sells, leases, and/or installs automatic emergency alarm protection systems or devices.

AUDIBLE ALARM — Includes all sirens, horns, whistles, and bells which are designed to attract the attention of neighbors and passersby and summon police or fire personnel and equipment to the scene of the alarm.

CHIEF OF POLICE — The Chief of Police of Dalton Borough or a designated representative.⁶

COMMUNICATION CENTER — Refers to the Lackawanna County Emergency Communications Center, 200 Adams Avenue, Scranton, PA 18503.

FALSE ALARM — Any signal activated by an automatic protection device, any audible alarm or any other kind of direct or indirect signal given the Police or Fire Departments of Dalton Borough to which police or firefighters respond, which is not a result of a burglary, fire, robbery or other similar emergency.

FEE — Refers to the rate to be charged by the Borough for the issuance of alarm installation permits and inspections.

6. Editor's Note: The definition of "citation," which immediately followed this definition, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

FIRE CHIEF — The duly elected Fire Chief of the Dalton Fire Company of Dalton Borough or a designated representative.

FIREMEN — Refers to all properly recorded members of the Dalton Fire Company of Dalton Borough or all properly recorded members of the Dalton Fire Company as contracted for dual coverage, and all other fire departments who may assist the Borough firefighters in responding to the alarm.

INTENTIONAL FALSE ALARM — A false alarm resulting from the intentional activation of an alarm device by an individual under circumstances where that individual has no reasonable basis to believe that a crime, fire or other emergency warranting immediate action by the Police Department has occurred or is occurring.

PERMIT — Refers to the written application/permit to be required to be obtained from the Borough prior to the installation of any alarm, and shall be on a form prescribed by the Borough.

PERMIT HOLDER — A person to whom the Police Department has issued an alarm device permit.

PERSON — An individual, corporation, partnership, incorporated association or other similar entity.

POLICE — Refers to all sworn members of the Dalton Borough Police Department and all other law enforcement agencies who may assist the Borough police in responding to the alarm.

SERVICE FEE — Refers to the cost of personnel and equipment which respond to false alarms.

TELEPHONE DIALER ALARM DEVICE — An alarm device designed to automatically transmit a recorded message over regular telephone lines directly to the Police Department or to a person who is instructed to notify the Police Department of the alarm.

WARNING NOTICE — Refers to a written notice to person(s), property owners, companies or corporations in control or possession of that property where an alarm has been installed, and where false alarms originate, directing corrective repairs to be taken to eliminate the false alarms.

§ 131-2. Permits required.

A. It shall be unlawful for a property owner, lessee of property or a person otherwise occupying a premises within the Borough to put an alarm device into operation on his premises or to allow an alarm device to be put into operation on his premises without first obtaining an alarm device permit from the Police Department. It shall also be unlawful for a property owner, lessee of property or a person otherwise occupying a premises outside of the Borough to put into operation on his premises an alarm device which terminates at the Borough's Police Headquarters or to allow such an alarm device to be put into operation on his premises without first obtaining an alarm device permit from the Police Department.

B. Application.

(1) In order to apply for an alarm device permit, a person must submit an

application to the Police Department stating:

- (a) His name;
 - (b) His home and business addresses and the telephone number of each;
 - (c) The location at which the alarm device will be installed and operated;
 - (d) The names, addresses and telephone numbers of at least two individuals who have keys to the premises at which the alarm device is located and who are authorized to enter the premises at any time, but who do not reside at the premises at which the alarm device is located; and
 - (e) A general written description of the device other than schematics.
- (2) If the device is to be leased or rented from, or is to be serviced pursuant to a service agreement by a person other than the person making application for an alarm device permit, the name, address, and telephone number of that person must be stated in the application. In addition, each person submitting an application for an alarm device permit shall submit a signed statement in the following form:
- "I (We), the undersigned applicant(s) for an alarm device permit, intending to be legally bound hereby, agree with the Borough that neither I (we), nor anyone claiming by, through or under me (us), shall make any claim against the Borough, its officials or agents, for any damages caused to the premises at which the alarm device, which is the subject of this application, is or will be located, if such damage is caused by a forced entry to said premises by employees of the Borough in order to answer an alarm from said alarm device at a time when said premises are or appear to be unattended or when in the discretion of said employees the circumstances appear to warrant a forced entry."
- (3) The Police Department shall furnish forms which any person wishing to apply for an alarm device permit shall submit with his application.
- C. A person applying for an alarm device permit for a telephone dialer alarm device, local sounding device, or an indirect alarm device shall submit a fee in the amount set pursuant to a resolution of the Dalton Borough Council with the application.⁷
- D. The Dalton Borough Police Department shall, within 15 weekdays from the receipt of an application for an alarm device permit, either grant an alarm device permit to the applicant or notify the applicant in writing that his application has been denied and the reason or reasons why it has been denied.
- E. Notwithstanding the language contained in Subsection A of this section, it shall not be unlawful for a person to continue to operate an alarm device on his premises without an alarm device permit for a period of 90 days after the effective date of this chapter, provided that said alarm device was in operation on the effective date of this chapter.

7. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- F. The Police Department shall have the power to revoke an alarm device permit. An alarm device permit shall be revoked by notifying the permit holder in writing that his alarm device permit has been revoked and the reason or reasons why it has been revoked. Said written notice shall be:
- (1) Delivered personally to the permit holder, in which case the revocation shall be effective immediately upon delivery, or
 - (2) Mailed to the permit holder at his last known address by certified mail, postage prepaid, in which case the revocation shall be effective three days after mailing.
- G. An alarm device permit may only be revoked for the following reasons:
- (1) Failure of an alarm device to conform to the operational standards set forth in § 131-3 of this chapter.
 - (2) Failure of a permit holder to pay a false alarm charge assessed to him by the Police Department under the provisions of § 131-4 of this chapter within 30 days of the mailing to him of a notice of the assessment of a false alarm charge.
 - (3) The occurrence of more than 12 false alarms from an alarm device during any calendar year.
 - (4) The occurrence of an intentional false alarm caused by the permit holder or by an individual over the age of 15 who resides on the premises where the alarm device is located.
 - (5) Failure of a permit holder with a direct alarm device to pay to the Police Department installation or maintenance fees assessed to him under § 131-5 of this chapter within 30 days of the due date thereof.
- H. A person who has had his alarm device permit revoked under Subsections G and H of this section may reapply for an alarm device permit 45 days after the effective date of such revocation, provided that if a person's alarm device permit was revoked for nonpayment of a false alarm charge or for nonpayment of installation or maintenance fees, or both, the Police Department shall deny said application unless such charge or fee or both have been paid. Notwithstanding the foregoing, a person who has had his alarm device permit twice revoked on the basis of an occurrence of an intentional false alarm may not reapply for an alarm device permit for one year from the effective date of the second revocation.

§ 131-3. Operational standards.

- A. If an alarm device is designed to transmit a recorded message directly to the Police Department, the duration of such recorded message shall not exceed 60 seconds. The contents of the recorded message shall be intelligible and in a format approved by the Police Department.
- B. An alarm device need not contain a delay service which causes a delay to occur between the time the alarm device receives a triggering stimulus and the time the alarm device transmits an alarm.

- C. A direct alarm device shall be designed to dial only specific telephone numbers designated by the Police Department and to allow the permit holder to abort the alarm signals.
- D. A direct alarm device shall be designed so that it interfaces with the central receiving station maintained by the Police Department.
- E. If an alarm device is designed to cause a bell, siren or sound-making device to be activated on or near the premises on which the alarm device is installed at the time it gives an alarm, said alarm device shall be designed to deactivate the bell, siren or other sound-making device after 30 minutes of operation. Preexisting units must be modified for a thirty-minute device unless said unit cannot be modified without replacement.
- F. All alarm devices shall meet the applicable standards of the Underwriters Laboratories and/or the National Fire Protection Association, and/or other recognized industry standards, and shall be permitted under this chapter if in conformity thereto. An alarm device which does not meet any of the above standards or for which there is no recognized industry standard shall require the applicant for a permit to submit evidence of the reliability or suitability of the alarm device. Any permit issued for such an alarm device which does not conform to the recognized standard shall be conditional subject to satisfactory performance of said alarm device after installation. The applicant for a permit may be required to submit subsequent evidence of the reliability and suitability of the alarm device.
- G. The sensory mechanism used in connection with an alarm device must be adjusted to suppress false indications of fire or intrusion, so that the alarm device will not be activated by impulses due to transient pressure change in water pipes, short flashes of light, wind noises such as the rattling or vibrating of doors or windows, vehicular noise adjacent to the premises, or other forces unrelated to genuine alarm situations.
- H. The alarm device must be maintained by the permit holder in good repair to assure reliability of operation.

§ 131-4. Prior alarm installations.

All persons, companies or corporations within the Borough who have alarm systems which were installed prior to the enactment of this chapter shall, within 90 days of the effective date, provide the appropriate agency, Police and/or Fire Department, with information as to the type of alarm, the name of the person(s), company or corporation who did the installation and the name of person(s), company or corporation providing maintenance service.

§ 131-5. False alarms.

- A. Intentional false alarms. No permit holder or person shall create an intentional false alarm.
- B. Accidental false alarms. Any person or permit holder causing accidental false alarms for any reason shall pay to the Borough a charge for each and every false alarm to which the Police and/or Fire Department responds, in accordance with the following schedule of charges:

- (1) The first recorded false alarm shall result in a written warning notice being issued to the person in charge of the property where the false alarm originally directing that proper repairs to the alarm system be completed within five days of the date of issuance of the warning notice, so as to eliminate additional false alarms within a ninety-day period immediately following the issuance of the written warning notice.
 - (2) All subsequent false alarms received from their location where a written warning notice had been issued shall result in the Dalton Borough submitting a bill to the persons, property owner, companies or corporations in charge of the property for service fees incurred by Dalton Borough or the Dalton Borough Fire Department for police and/or Fire Department personnel and equipment responding to the false alarm. Service fees shall include the reasonable costs of personnel and equipment responding as incurred by the Dalton Borough or Dalton Borough Fire Department for providing such emergency services plus an administrative service fee in the amount of \$100.
 - (3) Where repairs have been made in compliance to the written warning notice, and no false alarms are received for the ninety-day period following the date of issuance of said written warning notice, and that after the ninety-day period has expired a false alarm is received and enforcement shall again be initiated under Subsection B(1) of this section.
- C. A false alarm charge shall be due and payable at the office of the Police Department 30 days from the date of the mailing of the notice of assessment of the charge.
- D. Failure of a permit holder to pay a false alarm charge on or before the date due shall subject such permit holder to revocation of his alarm device permit under § 131-2H of this chapter.
- E. Failure of a person causing a false alarm, other than a permit holder, to pay a false alarm charge on or before the date due shall constitute a violation of the chapter, and shall subject said person to the penalties set forth in § 131-13 hereof.
- F. Pursuant to 18 Pa.C.S.A. § 7511(c)(1): "A person that owns, uses or possesses an alarm device or automatic dialing device may not, after causing or permitting three false alarms to occur in a consecutive twelve-month period, cause or permit a subsequent false alarm to occur in the same consecutive twelve-month period. A person that violates this paragraph commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$300."⁸

§ 131-6. Responsibility for enforcement.

In order to maintain uniformity of enforcement and centralized record keeping, the Dalton Borough Police Department shall be the primary enforcement agency for the regulations set forth in this chapter. The Dalton Fire Company; dual-coverage department, and all other emergency services responding to false alarms as defined in this chapter within the Borough, shall make all complaints known to the Dalton Borough Police Department, who will initiate enforcement provisions as outlined above.

8. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 131-7. Installation and maintenance fees for direct alarm systems.

- A. A permit holder who has a direct alarm device which is connected to a central receiving station at Police Department headquarters shall be required to pay to the Borough a fee for the connection of his direct alarm device to the central receiving station and a yearly fee for the maintenance of the central receiving station.
- B. The fee for connection of a direct alarm device to a central receiving station at Police Department headquarters shall be set pursuant to a resolution of the Dalton Borough Council, plus the actual cost of interface into the central receiving station for each such connection.
- C. In addition, a permit holder who has a direct alarm device shall pay a yearly fee for the maintenance of the central receiving station. This maintenance fee shall be determined by the Dalton Borough Council on an annual basis each July by prorating the maintenance costs among the number of permit holders at that time using the central receiving station, regardless of how long a permit holder has been connected to the central receiving station. The Police Department shall annually notify each permit holder who has a direct alarm device of the amount of the assessment for maintenance of the central receiving station. Such notice shall be in writing and mailed to the permit holder at his last known address by regular mail, postage prepaid. The maintenance fee shall be due and payable at the office of the Police Department 30 days from the date of the notice of assessment of the maintenance fee.
- D. The fee for connection of a direct alarm device to a central receiving station shall be due and payable at Police Department headquarters at the time an alarm device permit is issued to an applicant for such a permit. The Police Department shall not issue an alarm device to an applicant until such fee is paid.
- E. The Police Department shall not in any way be obligated to provide or continue to provide a central receiving station facility or facilities for direct alarm devices, provided that, if the Police Department decides to discontinue operation of a central receiving station facility, it shall notify all permit holders serviced by said facility.
- F. Failure of a permit holder to pay yearly fee for the maintenance of the central receiving station to which his direct alarm device is connected within 30 days of the date said payment is due shall be subject to the disconnection of his direct alarm device from the central receiving station and to the revocation of his alarm device permit.

§ 131-8. Change in location of Police Department.

If the location of the headquarters of the Police Department should change at any time, the Dalton Borough shall not be responsible for any cost incurred by permit holders or other persons because of said change in location.

§ 131-9. Testing.

No person shall conduct or test any alarm device without first obtaining permission from the Police Department. Where the equipment is keyed through an intermediary, no such permission is necessary unless the alarm or signal is to be relayed to the central receiving

station.

§ 131-10. Liability of municipality.

The issuance of any permit shall not constitute acceptance by the Dalton Borough of any liability to maintain any equipment to answer alarms, nor otherwise render the Dalton Borough liable to any person for any loss or damage relating to the alarm system or procedure.

§ 131-11. Administration and enforcement.

Administration and enforcement of this chapter shall be functions of the Dalton Borough and shall include the following:

- A. Authority to accept or reject a permit application or revoke a permit because of a misrepresentation or false statement contained in any application for a permit, failure to correct any deficiencies in equipment or operation of an alarm device after receipt of due notice from the Dalton Borough, or not meeting other conditions and specifications of this chapter.
- B. Authority to order the disconnection of an alarm device until such device is made to comply with operational standards set forth herein, but only when evidence of failure to comply with said standards imposes a burden upon Dalton Borough as a result of false alarms.
- C. Authority, at reasonable times and upon written notice, to enter upon any premises within the Dalton Borough to inspect the installation and operation of an alarm device.

§ 131-12. Right to appeal.

Whenever, under the provisions of this chapter, the Police Department is empowered to make a decision with respect to the installation, operation or maintenance of any alarm device, or with respect to the denial or revocation of any permit relating thereto, any applicant for a permit or permit holder aggrieved by such decision may, within 10 days following the decision, file a written appeal therefrom with the Dalton Borough Council of the Dalton Borough, whereupon the Dalton Borough Council shall promptly conduct a hearing within 30 days of the appeal petition and affirm, modify or reverse the decision appealed from. The decision of the Dalton Borough Council shall be final.

§ 131-13. Violations and penalties.⁹

Any person, firm or corporation who shall violate or permit a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed

9. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this chapter and each day the same is continued shall be deemed a separate offense.

§ 131-14. Authority.

This chapter is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, § 1005, known as the Borough Code, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

Chapter 135**ALCOHOLIC BEVERAGES****§ 135-1. Definitions.**

The following words or phrases shall have the meaning ascribed to them in this chapter:

LIQUOR, MALT OR BREWED BEVERAGES and CONTAINER — The same as the definitions contained in the Liquor Code of the Commonwealth of Pennsylvania.¹⁰

OPEN — When used in connection with a container shall mean any container which has been perforated in the case of a can or similar container or a container on which the cap has been loosened or the cork displaced and the official seal torn or mutilated.

§ 135-2. Consumption on public property prohibited.¹¹

It shall be unlawful, within the Borough of Dalton, for any person to consume, use, distribute, or furnish any liquor or malt or brewed beverages upon any public street, public municipal parking lot, private parking lot open to public use or public park.

§ 135-3. Consumption or possession of open containers in vehicles.¹²

Possession, consumption and/or transportation of alcoholic beverages in any motor vehicle shall be restricted and prosecuted pursuant to the State Vehicle Code, 75 Pa.C.S.A. § 3809, Restriction on alcoholic beverages.

§ 135-4. Possession of open containers on public property prohibited.¹³

It shall be unlawful, within the Borough of Dalton, for any person to have in their possession any open container containing "liquor" or "malt or brewed beverages" upon any public street, public municipal parking lot, private parking lot open to public use or public park.

§ 135-5. Violations and penalties.¹⁴

Any person who violates or permits a violation of this chapter shall, upon being found liable therefor, pay a fine of not more than \$600, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings.

10. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

11. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

12. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

13. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

14. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 139

AMUSEMENTS

GENERAL REFERENCES

Curfew — See Ch. 175.

ARTICLE I

Poolrooms, Billiard Rooms and Amusement Devices
[Adopted 5-12-1983 by Ord. No. 2-1983]**§ 139-1. License required.**

From and after the adoption of this article, it shall be unlawful for any person to keep or maintain any public pool or billiard room for hire and public amusement equipment including, but not limited to, pinball machines, shooting galleries, bowling machines, computer games, video games and all other similar devices, coin- or token-operated and automatic unless a license as hereinafter provided shall have been obtained.

§ 139-2. Application for license.

Said license shall be issued by the Chief of Police and shall be for a period of one year. The application for license shall contain the following information:

- A. The name and address of the applicant or applicants.
- B. The address of the premises for which the license is desired and a detailed description of the tables, machines, equipment, including the number thereof, to be maintained and operated therein.
- C. The name of the owner of the premises.
- D. At the time of filing the application, the applicant shall pay to the Borough of Dalton a one-time fee set pursuant to resolution of the Dalton Borough Council.¹⁵

§ 139-3. Transferability.¹⁶

If said license is granted, it shall not, under any circumstances, be transferable to any other premises or any other person or person during the year for which it is granted. The fee for a license issued under this article shall be as set pursuant to a resolution of the Borough Council per device as described in § 139-1 and is payable to the Borough of Dalton prior to the issuance of the said license and is nonrefundable. The license will be renewed annually upon payment of an additional license fee as set by the Borough Council per device. No additional devices shall be installed, used or maintained without proper license.

§ 139-4. Inspection by police.

All licensed devices shall be subject to reasonable inspection by Borough Police to determine if it poses a threat to the health safety, morals, and general welfare to the people of the Borough of Dalton.

§ 139-5. Violations and penalties.¹⁷

Any person who violates this article shall, upon being found liable therefor, pay a fine

15. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

16. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

17. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

of not more than \$600, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings.

Chapter 143

ANIMALS

ARTICLE I
Noise by Animals
[Adopted 12-14-2000 by Ord. No. 7-2000]

§ 143-1. Intent and purpose.

The Council of the Borough of Dalton, finding that excessive levels of sound are detrimental to the physical, mental and social well-being of the people as well as to their comfort, living conditions, general welfare and safety and being therefore a public health and welfare hazard, hereby declares it to be necessary to provide for the greater control and more effective regulation of excessive sound and the sources of excessive sound within the Borough of Dalton.

§ 143-2. Noise disturbance.

It shall be illegal within the Borough of Dalton for any person or persons to own, possess, harbor, or control any animal or bird which makes any noise continuously and/or incessantly for a period of 10 minutes or makes such noise intermittently for one-half hour or more to the disturbance of any person any time of the day or night regardless of whether the animal or bird is physically situated in or upon private property, said noise being a nuisance; provided, that at the time the animal or bird is making such noise no person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated nor is there any other legitimate cause which justifiably provoked the animal or bird.

§ 143-3. Exceptions.

This article shall not be deemed to prohibit or otherwise declare unlawful any agricultural operations protected from nuisance suits by Act No. 1982-133.¹⁸

§ 143-4. Violations and penalties.

- A. Any person, firm or corporation who shall violate any provision of this article shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this article and each day the same is continued shall be deemed a separate offense.¹⁹
- B. The provisions of this article shall be enforced by the Dalton Borough Police Department.

18. Editor's Note: See 3 P.S. § 951.

19. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 143-5. Authority.

This article is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, § 1005, known as the Borough Code, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

ARTICLE II
Control of Animals
[Adopted 9-12-2006 by Ord. No. 3-2006]

§ 143-6. Definitions.

As used in this article, the following terms shall have the meaning indicated, unless a different meaning clearly appears from the context:

OWNER — Any person having a right of property in any dog or having custody of any dog, or any person who harbors or permits a dog to remain on or around his or her property.

RUNNING AT LARGE — Being upon any public highway, street, alley, park or any other public land, or upon property of another person other than the owner, and not being accompanied by or under the control of the owner or any other person having custody of said dog.

§ 143-7. Co-enforcement responsibility of Police Department.

The Dalton Borough Police Department shall have concurrent responsibility for the enforcement of this article and the Dog Law of 1982 (3 P.S. § 459-101 et seq.), as hereinafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania.

§ 143-8. Running at large prohibited.

It shall be unlawful for the owner of any dog or dogs to allow or permit such dog or dogs to run at large in the Borough of Dalton. All dog owners are to have their dogs licensed and all dogs must be confined to the private property of the dog owner by use of a fence or other enclosure. The dog owners, when walking their dog or otherwise removing their dog from their premises, must keep their dog on a leash or similar restraining device.

§ 143-9. Seizing of dogs.

Any police officer of Dalton Borough or constable may seize any dog found at large in Dalton Borough. Such dogs are to be impounded at the Humane Society of Lackawanna County or other licensed kennel. All costs associated with the impounding of dogs seized pursuant to this article are to be the sole and separate responsibility of the dog owner.

§ 143-10. Licensed dogs.

The Chief of Police of Dalton Borough shall notify the owner of a licensed dog by registered or certified mail with return receipt that the dog is impounded.

§ 143-11. Unlicensed dogs.

Unlicensed dogs that are seized shall be impounded and held at the Humane Society of Lackawanna County or other licensed kennel.

§ 143-12. Animal defecation on public and private property restricted.

No person, having possession, custody or control of any animal, shall knowingly or negligently permit any dog or other animal to commit any nuisance, i.e. defecation upon any gutter, street, driveway, alley, curb or sidewalk in the Borough of Dalton, or upon the floors or stairways of any building or place frequented by the public or used in common by the tenants, or upon the outside walls, walkways, driveways, alleys, curbs or stairways of any building abutting on a public street or park, or upon the grounds of any public park or public area, or upon any private property other than the property of the owner of such animal.

§ 143-13. Disposal of animal feces.

Any person having possession, custody or control of any dog or other animal which commits a nuisance, i.e. defecation in any area other than the private property of the owner of such dog or other animal, as prohibited in § 143-12 shall be required to immediately remove any feces from such surface and either:

- A. Carry same away for disposal in a toilet; or
- B. Place same in a nonleaking container for deposit in a trash or litter receptacle.

§ 143-14. Exemption for dogs accompanying blind or handicapped persons.

The provisions of §§ 143-12 and 143-13 hereof shall not apply to a guide dog accompanying any blind persons, or to a dog used to assist any other physically handicapped person.

§ 143-15. Violations and penalties.²⁰

Any person, firm or corporation who shall violate any provision of this article shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this article and each day the same is continued shall be deemed a separate offense.

20. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 154**BUILDINGS, DANGEROUS****GENERAL REFERENCES**

Property maintenance — See Ch. 263.

Rental property reports — See Ch. 271.

§ 154-1. Conditions.

All structures or existing equipment which are or hereafter become unsafe, unsanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or which involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. All unsafe structures shall be taken down and removed or made safe, as the Zoning Enforcement Officer deems necessary and as provided for in this chapter. A vacant structure that is not secured against entry shall be deemed unsafe.

§ 154-2. Record.

The Zoning Enforcement Officer shall cause a report to be filed with the Dalton Borough Secretary on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.

§ 154-3. Notice.

If an unsafe condition is found, the Zoning Enforcement officer shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the Zoning Enforcement Officer acceptance or rejection of the terms of the order.

§ 154-4. Method of service.

Such notice shall be deemed properly served if a copy thereof is delivered to the owner personally or sent by certified or registered mail addressed to the owner at the last known address with the return receipt requested. If the certified or registered letter is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.

§ 154-5. Restoration.

Upon refusal or neglect of the person served with an unsafe notice to comply with the requirements of the order to abate the unsafe condition, the Borough Solicitor shall be

advised of all the facts in order to pursue recourse provided by law.

§ 154-6. Imminent danger.

When, in the opinion of the Zoning Enforcement Officer, there is imminent danger of failure or collapse of a building or structure or any part of a structure has fallen and life is endangered by the occupation of the building or structure, the Zoning Enforcement Officer is hereby authorized and empowered to order and require the occupants to vacate the same forthwith. The Zoning Enforcement Officer shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure is Unsafe and its Occupancy has been Prohibited by the Code Official." It shall be unlawful for any person to enter such structure except for the purpose of making the required repairs or demolishing the same.

§ 154-7. Temporary safeguards.

When, in the opinion of the Zoning Enforcement Officer, there is imminent danger due to an unsafe condition, the Zoning Enforcement Officer shall cause the necessary work to be done to render such structure temporarily safe, whether or not the legal procedure herein described has been instituted.

§ 154-8. Closing streets.

When necessary for the public safety, the Zoning Enforcement Officer shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being used.

§ 154-9. Emergency repairs.

For the purposes of this section, the Zoning Enforcement Officer shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

§ 154-10. Costs of emergency repairs.

Costs incurred in the performance of emergency work may be paid from the Dalton Borough Treasury. The Borough Solicitor shall then institute appropriate action against the owner of the premises where the unsafe structure is or was located.

§ 154-11. Unsafe equipment.

Equipment deemed unsafe by the Zoning Enforcement Officer shall not be operated after the date stated in the notice unless the required repairs or changes have been made and the equipment has been approved, or unless an extension of time has been secured from the Zoning Enforcement Officer in writing.

§ 154-12. Authority to seal equipment.

In the case of an emergency, the Zoning Enforcement Officer shall have the authority to seal out of service immediately any unsafe device or equipment regulated by this chapter.

§ 154-13. Unlawful to remove seal.

Any device or equipment sealed out of service by the Zoning Enforcement Officer shall be plainly marked with a sign or tag indicating the reason for such sealing. The sign or tag shall not be tampered with, defaced or removed except by the Zoning Enforcement Officer.

§ 154-14. Violations and penalties.²¹

Any person who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this chapter, and each day the same is continued shall be deemed a separate offense.

§ 154-15. Abatement of dangerous structures.

In the event any person shall violate any provision of this chapter, the Council of the Borough of Dalton may order the abatement or removal of any such dangerous structure by the owner or occupant of such grounds after 30 days' written notice to such owner. The Borough of Dalton will assess all costs associated with the abatement or removal of a dangerous structure against the owner and/or occupier, together with a reasonable attorney's fees, not to exceed 15% of the costs of removal and a penalty of 10% of such costs in the manner provided by law for the collection of municipal claims or by action of assumpsit.

§ 154-16. Authority.

This chapter is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

21. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 162**BURNING, OPEN****GENERAL REFERENCES**

Outdoor furnaces — See Ch. 202.

§ 162-1. Short title.

This chapter shall be known and may be cited as the "Dalton Borough Open Fire and Burning Ordinance."

§ 162-2. Policy.

- A. Because pollution of the air is detrimental to the health, comfort, living conditions, welfare and the safety of the citizens of Dalton Borough, it is hereby declared to be the policy of Dalton Borough to safeguard the citizens of Dalton Borough from air pollution.
- B. All outdoor burning is hereby discouraged because of the adverse effects to the environment and the detrimental impact on health, safety and general welfare of the citizens of Dalton.

§ 162-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

FLUE — Any duct, passage, stack, chimney or conduit permitting air contaminants to be emitted into the air.

FURNACE — Any enclosed device specifically designed for burning any material for the production of heat.

GARBAGE — All putrescent animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

GOVERNING BODY — The Council of the Borough of Dalton.

INCINERATOR — Any device specifically designed for the destruction by burning of refuse, sewage sludge, or any other combustible material.

ODOR — That property of a substance which affects the sense of smell.

OPEN BURNING — Any unenclosed fire wherein air contaminants, including smoke and/or odor, are emitted to the open air and are not directed thereto through a flue.

OPEN FIRE — A fire in which any material is burned in the open or in a receptacle other than a barbecue grill, chimera, ornamental patio warmer.

PERSON — Any individual, partnership, association, corporation, department, bureau,

agency or other legal entity.

RECYCLABLES — Materials designated as recyclable in Chapter 290, Solid Waste, Article II, Recycling, or any amendment thereto, or required by the terms of said Chapter 290, Article II, or any amendment thereto, or designated by resolution of the Borough of Dalton, to be kept separate from municipal waste and recycled, including leaf waste.

REFUSE — Garbage, rubbish and trade waste.

RUBBISH — Solids not considered to be highly flammable or explosive, including but not limited to rags, old clothes, leather, rubber, carpets, wood, excelsior, paper, ashes, tree branches, tree leaves, yard trimmings, furniture, tin cans, glass, crockery, masonry and other similar materials.

SALVAGE OPERATION — Any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.²²

SMOKE — Extremely small solid particles produced by incomplete combustion or organic substances, and includes, but is not limited to, flue ash, cinders, tarry matter, unburned gases, soot or carbon and gaseous combustion products.

TRADE WASTE — All solid or liquid material or rubbish resulting from construction, building operations, or the prosecution of any business, trade or industry including but not limited to, plastic products, cartons, paint, grease, oil and other petroleum products, chemicals, cinders and other forms of solid or liquid waste materials; provided, that "trade waste" shall not include any coal refuse associated with the mining or preparation of coal.

§ 162-4. Burning regulations; exceptions.

No person shall conduct any open burning of materials including but not limited to refuse, recyclables, leaf waste or salvage operations within the Borough of Dalton, subject to the following exceptions:

- A. Open fires. Open fires may be set in the performance of an official duty under the direction of the Fire Chief of the Dalton Fire Department if the fire is necessary for:
 - (1) The prevention of a fire hazard which cannot be abated by other means; or
 - (2) The protection of public health.
- B. Public barbecue. A nonprofit community organization may conduct a public barbecue and may construct and operate a barbecue pit subject to obtaining a permit from the Chief of Police of Dalton Borough in accordance with the provisions of this chapter.
- C. Outdoor cooking. Any burning, the sole purpose of which is to cook or prepare food, provided that said fire is confined in a fireplace, cooking grill or other container designed for outdoor cooking.
- D. Bonfires. Bonfires may only be conducted by a government, school district or a community based organization and shall be permitted, provided that such bonfire is

22. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

conducted in accordance with the provisions of this chapter and a permit has been issued by the Chief of Police of Dalton Borough. The bonfire shall be fully extinguished at the time specified on the permit, and all safety precautions as directed by the Chief of Police as part of the permitting process must be strictly followed.²³

§ 162-5. Permits.

A permit issued by Dalton Borough shall be required for any open burning allowed by this chapter. Any person proposing to set an open fire which requires a permit shall obtain the permit prior to setting the fire. As a precondition for the issuance of the permit the person applying for same agrees to permit the Chief of Police, the Chief of the Dalton Fire Department or their designees to inspect the area upon which the proposed fire is to be set. Further, the Dalton Police Chief will impose reasonable public health and safety conditions upon the premises where the fire is proposed to be set. The person applying for the permit agrees to allow the Chief of Police and the Dalton Fire Department to enter upon their property at any time during the time in which the permitted fire is burning and to perform such inspections that may be necessary subsequent to the burn to ensure that the fire is properly extinguished and that all conditions related to the issuance of the permit have been met.

§ 162-6. Enforcement.

- A. Council of the Borough of Dalton by this chapter intends to authorize the Dalton Borough Police Chief and the Dalton Police Department as the enforcement officers with full power to enforce the provisions of this chapter. Further, the Chief of the Dalton Volunteer Fire Department is designated as a resource to assist the Dalton Borough Police Department with the imposition of any conditions related to public health and safety as part of the permit issuance process.
- B. Dalton Borough through the Police Chief may issue such orders that are necessary to aid in the enforcement of the provisions of this chapter. These orders shall include, but shall not be limited to: orders requiring persons to cease unlawful open burning which, in the course of its occurrence, is in violation of any provision of this chapter; orders to take corrective action or to abate a public nuisance; orders requiring the testing, sampling, or monitoring of any burning; or orders requiring production of information. Such an order may be issued if the Dalton Police Chief finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the Dalton Police Chief finds that any person is in violation of any provision of this chapter.
- C. The Dalton Police Chief may, in its order, require compliance with such conditions as are necessary to prevent or abate open burning or effect the purposes of this chapter.
- D. An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the Dalton Borough Council from an order of the Police Chief shall not act as a supersedeas.

23. Editor's Note: A correction to this Subsection D was adopted 7-15-2010 by the Borough Council. This subsection reflects that correction.

- E. The authority of the Dalton Police Chief to issue an order under this section is in addition to any remedy or penalty which may be imposed pursuant to this chapter. The failure to comply with any such order is hereby declared to be a public nuisance.

§ 162-7. Responsibility of owners and operators.

- A. Whenever the Dalton Chief of Police finds that open burning is occurring in the Borough of Dalton, other than those exceptions noted in § 162-4 above, the Chief of Police may order the owner or operator to take corrective action in a manner satisfactory to the Chief of Police, or the Chief of Police may order the owner or operator to allow access to the land to a third party, including but not limited to the Dalton Volunteer Fire Department, to take such action.
- B. For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing, and investigation related to a corrective action, Dalton Borough may collect the amount in the same manner as civil penalties are assessed and collected following the process for assessment and collection of a civil penalty contained in § 162-9 of this chapter.

§ 162-8. Criminal penalties.

Any person who violates any provision of this chapter or any order of the Dalton Chief of Police issued pursuant to this chapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$2,500 for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for 90 days for each separate offense.

§ 162-9. Civil penalties.

- A. In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or any order issued pursuant to this chapter, the Borough of Dalton may assess a civil penalty for the violations. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed \$25,000 per day for each violation. In determining the amount of the penalty, the Borough of Dalton shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of the Borough of Dalton or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the Borough of Dalton; the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violations; the speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the owners or operators of the source or facility and other relevant factors.²⁴
- B. When the Borough of Dalton proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full; or if the person wishes

24. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to Dalton Borough within the thirty-day period for placement in an escrow account or post an appeal bond to Dalton Borough within the thirty-day period in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the Borough of Dalton. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the Borough of Dalton shall, within 30 days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit.

- C. The Borough of Dalton reserves the right to pursue all penalties and remedies available to Dalton Borough as are set forth in the Air Pollution Control Act (APCA), as amended, 35 P.S. §§ 4009, 4009.1 and 4012(g).²⁵

§ 162-10. Unlawful conduct.

It shall be unlawful to fail to comply with or to cause or assist in the violation of any of the provisions of this chapter or to fail to comply with any order or other requirement of the Borough of Dalton; or to cause a public nuisance; or to cause air, soil or water pollution resulting from an open burning incident; or to hinder, obstruct, prevent, or interfere with the Borough of Dalton or its personnel in their performance of any duty hereunder, including denying the Dalton Borough Police Chief access to the source or facility; or to violate the provisions of 18 Pa.C.S.A. § 4903 (relating to false swearing) or § 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this chapter. The owner or operator of an open burning source shall not allow pollution of the air, water, or other natural resources of the Borough of Dalton to result from the source.

§ 162-11. Public nuisances.

A violation of this chapter or of any order issued by the Borough of Dalton under this chapter shall constitute a public nuisance. The Borough of Dalton shall have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, when abating a public nuisance, the Borough of Dalton may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in § 162-9. Whenever the nuisance is maintained or continued contrary to this chapter or any order issued pursuant to this chapter, the nuisance may be abatable in the manner provided by this chapter. Any person who causes the public nuisance shall be liable for the cost of abatement.

§ 162-12. Municipal liability.

The Borough of Dalton, and its agents, officials and representatives shall not under any circumstances be liable or legally responsible for activities or conditions which constitute a nuisance under the terms of this chapter. Any liability or damages resulting from activities or conditions constituting a nuisance are the sole responsibility of the owner of the property, and/or the person or persons responsible for said activity or

25. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

condition. The failure to enforce the terms of this chapter shall not constitute a cause of action against the Borough of Dalton or its agents, officials or representatives.

§ 162-13. Authority.

This chapter is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, § 1005, known as the Borough Code, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

Chapter 166**COMPREHENSIVE PLAN****GENERAL REFERENCES**

Floodplain management — See Ch. 197.

Subdivision and land development — See Ch. 300.

Soil erosion and sediment control — See Ch. 286.

Zoning — See Ch. 400.

§ 166-1. Comprehensive Plan adopted.

The Council of the Borough of Dalton adopts the Final Draft/July 2009 SAPA Comprehensive Plan as the Scranton-Abingtons Planning Association Comprehensive Plan for the Borough of Dalton.

Chapter 175**CURFEW****GENERAL REFERENCES**

Amusements — See Ch. 139, Art. I.

§ 175-1. Definitions and interpretation.

- A. As used in this chapter, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

CUSTODIAN — A person having care or custody of a minor.

ESTABLISHMENT — Any privately owned place of business carried on for a profit or any place of amusement or entertainment to which the public is invited.

LEGITIMATE EVENT — A sponsored, scheduled event (excluding parties given at a private residence).

MINOR — Any person under the age of 18 years.

OPERATOR — Any individual, firm, association, partnership or corporation operating, managing or conducting any establishment. Whenever used in any clause prescribing a penalty, "operator," as applied to an association or partnership, includes the member or partners thereof and, as applied to a corporation, includes the officers thereof.

PARENT — Any natural parent of any minor, a guardian or any adult person 21 years of age or over responsible for the care and custody of a minor.

PUBLIC PLACE — Any public street, highway, sidewalk, road, alley, park, playground, wharf, dock, public building or vacant lot.

REMAIN — To loiter, idle, wander, stroll or play in or upon.

- B. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. "Shall" is always mandatory and not merely directory.

§ 175-2. Purposes.

This Chapter 175, Curfew, prescribing, in accordance with prevailing community standards, regulations for the conduct of minors on streets at night; for the protection of younger children in the Dalton Borough from each other and from other persons on the street during nighttime hours; for the enforcement of parental control and responsibility for their children; for the protection of the public from nocturnal mischief by minors; and for the reduction of the incidents of juvenile criminal activity, all for the good of minors, for the furtherance of family responsibility, and for the public good, safety and welfare.

§ 175-3. Prohibited conduct of minors.

- A. No minor shall remain in or upon any public place or any establishment between the hours of 11:00 p.m. and 6:00 a.m. of the following day.
- B. The provisions of this section shall not apply to any minor accompanied by a parent, guardian or custodian or to a minor upon an errand or other legitimate business directed by such minor's parents or to a minor attending any legitimate event or to any minor who is engaged in gainful, lawful employment during the curfew hours.
- C. The provisions of this section shall not apply to any minor attending or traveling to and from any official scheduled artistic, civic, cultural, educational, religious, social or sporting event.

§ 175-4. Prohibited conduct of parents.

No parent, guardian or custodian of a minor shall allow or permit such minor to remain in or upon any public place or any establishment in violation of § 175-3.

§ 175-5. Prohibited conduct of establishment operators.

No operator of an establishment or the operator's agent or employee shall allow or permit such minor to remain in or upon any public place or any establishment in violation of § 175-3.

§ 175-6. Procedure upon violation.

Any minor found upon the street, alleys, parks or public places within the Dalton Borough in violation of § 175-3 shall be taken into custody by the Dalton police or legally deputized individual, be delivered to his parent(s), guardian or person having the legal custody of said minor, and be given a copy of this chapter. A report shall be filed and kept in a book for that specific purpose. If said parent, guardian or person having the legal custody of said minor shall again allow the minor to be on the streets, alleys, parks or public places in violation of § 175-3, said parent, guardian, or person having the legal custody of said minor so offending shall, upon the second offense, be called along with the offender and be so advised once again as to the penalty provisions contained in this chapter. Upon the third violation, said parent, guardian or person will be cited for the violation.

§ 175-7. Procedure in case of repeated violations or other factor interfering with enforcement.

Any minor who shall violate this chapter more than three times may, at the discretion of the proper Dalton officials, be reported to a society or organization, the purpose of which is to take charge of incorrigibles and delinquents, and proceedings shall then be taken in the proper court for the permanent welfare of such minor and a like procedure may be taken in cases where the arrest of the parent is not effective, or where for any other reason the provisions of § 175-3 of this chapter cannot be made effective by the imposition of fines and penalties.

§ 175-8. Police discretion in age determination.

The police officers of the Dalton Borough in taking minors into custody shall use their discretion in determining age, and, in doubtful cases, may require positive proof of age. Until such proof is furnished, the officer's judgment shall prevail.

§ 175-9. Violations and penalties.²⁶

- A. Liability of parent. Any parent, guardian or custodian who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this chapter and each day the same is continued shall be deemed a separate offense.
- B. Liability of an operator of establishment. Any operator of an establishment and any agent or employee thereof who violates any provision of § 175-5 shall be fined not more than \$1,000 or imprisoned for not more than 30 days, or both. Each day of continuing violation shall be deemed a separate offense.

§ 175-10. Authority.

This chapter is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

26. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 191**FIREWORKS****GENERAL REFERENCES**

Large gatherings — See Ch. 209.

§ 191-1. Permit required.

It shall be unlawful for any person, persons, firms or corporations, amusement parks, fair associations, or any other organizations or groups of individuals, to have or to hold public displays of fireworks, as that term is defined in the Act of May 15, 1939, P.L. 134, as amended, 35 P.S. § 1271 et seq., within the limits of the Borough of Dalton unless a permit therefor is first granted by the Borough of Dalton as hereinafter provided.

§ 191-2. Application for permit.

- A. Any person, persons, firms or corporations, amusement parks, fair associations, or any other organizations or groups of individuals desiring to explode any fireworks, as defined in the above-stated Act, in a public display must complete an application for a fireworks display permit and submit the completed application to the Borough of Dalton at least 15 days in advance of the proposed display.
- B. Applications for a fireworks display permit will be available at the Borough of Dalton Administrative Offices during normal business hours and must be completed and signed by the applicant or an officer or authorized agent of the applicant.
- C. The permit application will contain as a minimum the following:
 - (1) Name, address, telephone number and fax number (if applicable) of the applicant and, if the applicant is an organization, the names, address, telephone number and fax number (if applicable) of the contact person for the organization;
 - (2) Name of the individual or organization that will be responsible for providing the fireworks and detonation. The individual or organization responsible for providing and detonating the fireworks will provide a list of credentials, experience and qualifications as part of the application process;
 - (3) Proposed site and date and time of the fireworks display;
 - (4) Number and kinds of fireworks to be discharged;
 - (5) The manner and place of storage of such fireworks prior to display; and
 - (6) Site plan explaining all structures, structures occupied, overhead transmission lines, streets, parking areas, and areas where spectators for the display will be

gathered. The site plan should also contain a symbol defining North and a sketch of the general area where the fireworks will be set off and the area they will be directed.

§ 191-3. Review and approval by Fire Chief.

- A. A site inspection of the proposed site for the fireworks display shall be conducted by the Fire Chief of the Dalton Fire Department, or his or her designee.
- B. The Fire Chief, or his or her designee, shall determine whether or not the display is a fire hazard to any and all structures in the immediate area of the display.
- C. The Fire Chief, or his or her designee, shall designate the area from which the display will originate and allow fireworks to be detonated from that area only and shall notify the applicant and the Borough prior to the display as to whether the presence of firefighters and firefighting equipment will be required at the display.
- D. The approval of the application by the Fire Chief, or his or her designee, will be required prior to the issuance of a fireworks display permit by the Borough.
- E. Any and all holders of fireworks display permits will be required to notify the Fire Chief, or his or her designee, at least 48 hours in advance of the display and further notify the Lackawanna County Communications Center (911) at least two hours in advance of the display notifying them when and where fireworks will be displayed. Permit holders will be required to notify the Lackawanna County Communications Center (911) at the conclusion of the display as well.
- F. The Fire Chief, or his or her designee, will not allow fireworks displays if there is a ban on open burning and/or a declared drought emergency in effect at the time of the notification telephone calls.

§ 191-4. Insurance and liability.

- A. Applicants shall, at the time of the application, provide a certificate of insurance to the Borough with a minimum limit of insurance of \$1,000,000 and naming the Borough as an additional insured. The individual or organization responsible for providing and detonating the fireworks will also provide a certificate of insurance to the Borough with a minimum limit of insurance of \$1,000,000 and naming the Borough as an additional insured.
- B. The permittee shall agree to hold harmless and indemnify the Borough, its officers, agents and/or employees from any liability arising from the display for which the permit is issued. This language shall appear on the permit as issued.

§ 191-5. Permit issuance.

- A. The Borough Secretary, or his or her designee, will issue fireworks display permits after approvals by the Fire Chief have been certified on the application. Permits will be issued and validated on a per-event basis.
- B. Cost of the permit will be as set pursuant to resolution of the Dalton Borough Council for each display held by the permittee, payable to the Borough prior to the

issuance of the permit. Additionally, if the Borough determines that any additional insurance is necessary in order to protect the Borough, then the applicant will obtain at its expense the additional insurance necessary to protect the Borough. Also, if there any additional costs associated with the permit review process, those additional costs will be passed on to the applicant.²⁷

C. Permits are not transferable.

§ 191-6. Violation and penalties.²⁸

Any person who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this chapter and each day the same is continued shall be deemed a separate offense.

§ 191-7. Enactment.

This chapter is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, § 1005, known as the Borough Code, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

27. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

28. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 197

FLOODPLAIN MANAGEMENT

ARTICLE I
General Provisions

§ 197-1. Intent.

The intent of this chapter is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- C. Minimize danger to public health by protecting water supply and natural drainage.
- D. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing excessive development in areas subject to flooding.
- E. Comply with federal and state floodplain management requirements.

§ 197-2. Applicability.

It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or development anywhere within the Borough of Dalton unless a permit has been obtained from the Floodplain Administrator.

§ 197-3. Abrogation and greater restrictions.

This chapter supersedes any other conflicting provisions which may be in effect in identified floodplain areas. However, any other ordinance provisions shall remain in full force and effect to the extent that those provisions are more restrictive. If there is any conflict between any of the provisions of this chapter, the more restrictive shall apply.

§ 197-4. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this chapter shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the chapter, which shall remain in full force and effect, and for this purpose the provisions of this chapter are hereby declared to be severable.

§ 197-5. Warning and disclaimer of liability.

- A. The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on accepted engineering methods of study. Larger floods may occur or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas outside any identified floodplain areas, or that land uses permitted within such areas, will be free from flooding or flood damages.
- B. This chapter shall not create liability on the part of the Borough of Dalton or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

ARTICLE II Administration

§ 197-6. Designation of Floodplain Administrator.

- A. The Zoning Officer is hereby appointed to administer and enforce this chapter and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may: (A) fulfill the duties and responsibilities set forth in these regulations, (B) delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees, or (C) enter into a written agreement or written contract with another agency or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 CFR 59.22.
- B. In the absence of a designated Floodplain Administrator, the Floodplain Administrator duties are to be fulfilled by the President of Council.

§ 197-7. Permits required.

A permit shall be required before any construction or development is undertaken within any area of the Borough of Dalton.

§ 197-8. Duties and responsibilities of Floodplain Administrator.

- A. The Floodplain Administrator shall issue a permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances.
- B. Prior to the issuance of any permit, the Floodplain Administrator shall review the application for the permit to determine if all other necessary government permits required by state and federal laws have been obtained, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended); the Pennsylvania Clean Streams Act (Act 1937-394, as amended),²⁹ and the U.S. Clean Water Act, Section 404, 33 U.S.C. § 1344. No permit shall be issued until this determination has been made.
- C. In the case of existing structures, prior to the issuance of any development/permit, the Floodplain Administrator shall review the proposed cost of improvements or repairs and the pre-improvement market value of the structure, so that a substantial improvement/substantial damage determination can be made, in accordance with FEMA's Substantial Improvement/Substantial Damage Desk Reference.
- D. During the construction period, the Floodplain Administrator or other authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable municipal laws and ordinances. He/she shall make as many inspections

29. Editor's Note: See 35 P.S. § 750.1 et seq., 32 P.S. § 693.1 et seq., and 35 P.S. § 691.1 et seq., respectively.

during and upon completion of the work as are necessary.

- E. In the discharge of his/her duties, the Floodplain Administrator shall have the authority to enter any building, structure, premises or development in the identified floodplain area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this chapter.
- F. In the event the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the permit and report such fact to the Council for whatever action it considers necessary.
- G. The Floodplain Administrator shall maintain in perpetuity, or for the lifetime of the structure, all records associated with the requirements of this chapter including, but not limited to, finished construction elevation data, permitting, inspection and enforcement.
- H. The Floodplain Administrator is the official responsible for submitting a biennial report to FEMA concerning community participation in the National Flood Insurance Program as requested.
- I. The responsibility, authority and means to implement the commitments of the Floodplain Administrator can be delegated from the person identified. However, the ultimate responsibility lies with the person identified in the floodplain ordinance as the floodplain administrator/manager.
- J. The Floodplain Administrator shall consider the requirements of 34 Pa. Code and the 2015 IBC and the 2015 IRC, or the latest revision thereof as adopted by the Commonwealth of Pennsylvania.

§ 197-9. Application procedures and requirements.

- A. Application for such a permit shall be made, in writing, to the Floodplain Administrator on forms supplied by the Borough of Dalton. Such application shall contain the following:
 - (1) Name and address of applicant.
 - (2) Name and address of owner of land on which proposed construction is to occur.
 - (3) Name and address of contractor.
 - (4) Site location including address.
 - (5) Listing of other permits required.
 - (6) Brief description of proposed work and estimated cost, including a breakout of flood-related cost and the market value of the building before the flood damage occurred where appropriate.
 - (7) A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.

- B. If any proposed construction or development is located entirely or partially within any identified floodplain area, applicants for permits shall provide all the necessary information in sufficient detail and clarity to enable the Floodplain Administrator to determine that:
- (1) All such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and ordinances;
 - (2) All utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage;
 - (3) Adequate drainage is provided so as to reduce exposure to flood hazards;
 - (4) Structures will be anchored to prevent floatation, collapse, or lateral movement;
 - (5) Building materials are flood-resistant;
 - (6) Appropriate practices that minimize flood damage have been used; and
 - (7) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and located to prevent water entry or accumulation.
- C. Applicants shall file the following minimum information plus any other pertinent information as may be required by the Floodplain Administrator to make the above determination:
- (1) A completed permit application form.
 - (2) A plan of the entire site, clearly and legibly drawn at a scale of one inch being equal to 100 feet or less, showing the following:
 - (a) North arrow, scale, and date;
 - (b) Topographic contour lines, if available;
 - (c) The location of all existing and proposed buildings, structures, and other improvements, including the location of any existing or proposed subdivision and development;
 - (d) The location of all existing streets, driveways, and other access ways; and
 - (e) The location of any existing bodies of water or watercourses, identified floodplain areas, and, if available, information pertaining to the floodway, and the flow of water including direction and velocities.
 - (3) Plans of all proposed buildings, structures and other improvements, drawn at suitable scale showing the following:
 - (a) The proposed lowest floor elevation of any proposed building based upon North American Vertical Datum of 1988;
 - (b) The elevation of the base flood;

- (c) Supplemental information as may be necessary under 34 Pa. Code, the 2015 IBC or the 2015 IRC, or the latest revision thereof as adopted by the Commonwealth of Pennsylvania.
- (4) The following data and documentation:
 - (a) Detailed information concerning any proposed floodproofing measures and corresponding elevations.
 - (b) If available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood.
 - (c) Documentation, certified by a registered professional engineer or architect, to show that the effect of any proposed development within a Floodway Area (see § 197-18A) will not increase the base flood elevation at any point.
 - (d) Documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within an AE Area/District without floodway (see § 197-18B) when combined with all other existing and anticipated development, will not increase the base flood elevation more than one foot at any point within the community.
 - (e) A document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the base flood. Such statement shall include a description of the type and extent of floodproofing measures which have been incorporated into the design of the structure and/or the development.
 - (f) Detailed information needed to determine compliance with § 197-24F, Storage, and § 197-25, Development which may endanger human life, including:
 - [1] The amount, location and purpose of any materials or substances referred to in §§ 197-24F and 197-25 which are intended to be used, produced, stored or otherwise maintained on site.
 - [2] A description of the safeguards incorporated into the design of the proposed structure to prevent leaks or spills of the dangerous materials or substances listed in § 197-25 during a base flood.
 - (g) The appropriate component of the Department of Environmental Protection's Planning Module for Land Development.
 - (h) Where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection, to implement and maintain erosion and sedimentation control.
- D. Applications for permits shall be accompanied by a fee, payable to the municipality based upon the estimated cost of the proposed construction as determined by the

Floodplain Administrator at rates set pursuant to a resolution of the Dalton Borough Council.

§ 197-10. Review by County Conservation District.

A copy of all applications and plans for any proposed construction or development in any identified floodplain area to be considered for approval shall be submitted by the Floodplain Administrator to the County Conservation District for review and comment prior to the issuance of a permit. The recommendations of the Conservation District shall be considered by the Floodplain Administrator for possible incorporation into the proposed plan.

§ 197-11. Review of application by others.

A copy of all plans and applications for any proposed construction or development in any identified floodplain area to be considered for approval may be submitted by the Floodplain Administrator to any other appropriate agencies and/or individuals (e.g., planning commission, municipal engineer, etc.) for review and comment.

§ 197-12. Changes.

After the issuance of a permit by the Floodplain Administrator, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Floodplain Administrator. Requests for any such change shall be in writing, and shall be submitted by the applicant to Floodplain Administrator for consideration.

§ 197-13. Placards.

In addition to the permit, the Floodplain Administrator shall issue a placard, or similar document, which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the permit and the date of its issuance, and be signed by the Floodplain Administrator.

§ 197-14. Start of construction.

- A. Work on the proposed construction or development shall begin within 180 days after the date of issuance of the development permit. Work shall also be completed within 12 months after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. The issuance of development permit does not refer to the zoning approval.
- B. The actual start of construction means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the

main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

- C. Time extensions shall be granted only if a written request is submitted by the applicant, who sets forth sufficient and reasonable cause for the Floodplain Administrator to approve such a request and the original permit is compliant with the ordinance and FIRM/FIS in effect at the time the extension is granted.

§ 197-15. Enforcement; violations and penalties.

- A. Notices. Whenever the Floodplain Administrator or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this chapter, or of any regulations adopted pursuant thereto, the Floodplain Administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:
- (1) Be in writing;
 - (2) Include a statement of the reasons for its issuance;
 - (3) Allow a reasonable time not to exceed a period of 30 days for the performance of any act it requires;
 - (4) Be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this state;
 - (5) Contain an outline of remedial actions which, if taken, will effect compliance with the provisions of this chapter.
- B. Penalties. Any person who fails to comply with any or all of the requirements or provisions of this chapter or who fails or refuses to comply with any notice, order or direction of the Floodplain Administrator or any other authorized employee of the municipality shall be guilty of a summary offense and upon conviction shall pay a fine to Borough of Dalton of not less than \$50 nor more than \$1,000 plus costs of prosecution. In default of such payment, such person shall be imprisoned in county prison for a period not to exceed 30 days. Each day during which any violation of this chapter continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this chapter. The imposition of a fine or penalty for any violation of or noncompliance with this chapter shall not excuse the violation or noncompliance or permit it to continue. All such persons shall be required to correct or remedy such violations and noncompliance within a reasonable time. Any development initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this chapter may be declared by the Council to be a public nuisance and abatable as such.

§ 197-16. Appeals.

- A. Any person aggrieved by any action or decision of the Floodplain Administrator concerning the administration of the provisions of this chapter may appeal to the Zoning Hearing Board. Such appeal must be filed, in writing, within 30 days after the decision, determination or action of the Floodplain Administrator.
- B. Upon receipt of such appeal the Zoning Hearing Board shall consider the appeal in accordance with the Municipalities Planning Code and any other local ordinance.
- C. Any person aggrieved by any decision of the Zoning Hearing Board may seek relief therefrom by appeal to court, as provided by the laws of this state including the Pennsylvania Flood Plain Management Act.³⁰

30. Editor's Note: See 32 P.S. § 679.101 et seq.

ARTICLE III
Identification of Floodplain Areas

§ 197-17. Identification.

A. The identified floodplain area shall be:

- (1) Any areas of Borough of Dalton classified as Special Flood Hazard Areas (SFHAs) in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated August 5, 2020, and issued by the Federal Emergency Management Agency (FEMA) or the most recent revision thereof, including all digital data developed as part of the Flood Insurance Study.

B. The above referenced FIS and FIRMs, and any subsequent revisions and amendments, are hereby adopted by Borough of Dalton and declared to be a part of this chapter.

§ 197-18. Description and special requirements of identified floodplain areas.

The identified floodplain area shall consist of the following specific areas:

A. The Floodway Area shall be those areas identified in the FIS and the FIRM as floodway and which represent the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation by more than one foot at any point. This term shall also include floodway areas which have been identified in other available studies or sources of information for those Special Flood Hazard Areas where no floodway has been identified in the FIS and FIRM.

- (1) Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (2) Within any floodway area, no new construction or development shall be allowed, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.

B. The AE Area/District shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided.

- (1) The AE Area adjacent to the floodway shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided and a floodway has been delineated.
- (2) AE Area without floodway shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided but no floodway has been determined.

- (a) No encroachments, including fill, new construction, substantial

improvements, or other development shall be permitted in an AE Zone without floodway, unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed development, together with all other existing and anticipated development, would not result in an increase in flood levels of more than one foot within the entire community during the occurrence of the base flood discharge.

- (b) No new construction or development shall be located within the area measured 50 feet landward from the top-of-bank of any watercourse, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
- C. The A Area/District shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no base flood elevations have been provided. For these areas, elevation and floodway information from other federal, state, or other acceptable sources shall be used when available. Where other acceptable information is not available, the base flood elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.
- D. In lieu of the above, the municipality may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the municipality. In the absence of any of the above data or documentation, the community may require elevation of the lowest floor to be at least three feet above the highest adjacent grade.
- E. The AO and AH Area/District shall be those areas identified as Zones AO and AH on the FIRM and in the FIS. These areas are subject to inundation by one-percent-annual-chance shallow flooding where average depths are between one and three feet. In Zones AO and AH, drainage paths shall be established to guide floodwaters around and away from structures on slopes.

§ 197-19. Changes in identification of area.

The Identified Floodplain Area may be revised or modified by the Council where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change to the Special Flood Hazard Area, approval must be obtained from FEMA. Additionally, as soon as practicable, but not later than six months after the date such information becomes available, a community shall notify FEMA of the changes to the Special Flood Hazard Area by submitting technical or scientific data. See § 197-22B for situations where FEMA notification is required.

§ 197-20. Boundary disputes.

Should a dispute concerning any identified floodplain boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved

by this decision or determination may appeal to the Council. The burden of proof shall be on the appellant.

§ 197-21. Jurisdictional boundary changes.

Prior to development occurring in areas where annexation or other corporate boundary changes are proposed or have occurred, the community shall review flood hazard data affecting the lands subject to boundary changes. The community shall adopt and enforce floodplain regulations in areas subject to annexation or corporate boundary changes which meet or exceed those in 44 CFR 60.3.

ARTICLE IV
Technical Provisions

§ 197-22. General.

A. Alteration or relocation of watercourse.

- (1) No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality, and until all required permits or approvals have first been obtained from the Department of Environmental Protection Regional Office.
- (2) No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not reduce or impede the flood-carrying capacity of the watercourse in any way.
- (3) In addition, FEMA and the Pennsylvania Department of Community and Economic Development shall be notified prior to any alteration or relocation of any watercourse.

B. When Borough of Dalton proposes to permit the following encroachments: any development that causes a rise in the base flood elevations within the floodway; or any development occurring in Zones A1-30 and Zone AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation; or alteration or relocation of a stream (including but not limited to installing culverts and bridges) the applicant shall (as per 44 CFR 65.12):

- (1) Apply to FEMA for conditional approval of such action prior to permitting the encroachments to occur.
- (2) Upon receipt of the FEMA Administrator's conditional approval of map change and prior to approving the proposed encroachments, a community shall provide evidence to FEMA of the adoption of floodplain management ordinances incorporating the increased base flood elevations and/or revised floodway reflecting the post-project condition.
- (3) Upon completion of the proposed encroachments, the applicant shall provide as-built certifications. FEMA will initiate a final map revision upon receipt of such certifications in accordance with 44 CFR 67.

C. Any new construction, development, uses or activities allowed within any identified floodplain area shall be undertaken in strict compliance with the provisions contained in this chapter and any other applicable codes, ordinances and regulations.

§ 197-23. Elevation and floodproofing requirements.

A. Residential structures.

- (1) In AE, A1-30, and AH Zones, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation.

- (2) In A Zones, where there are no base flood elevations specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation determined in accordance with § 197-18C of this chapter.
- (3) In AO Zones, any new construction or substantial improvement shall have the lowest floor (including basement) at or above the highest adjacent grade at least as high as the depth number specified on the FIRM.
- (4) The design and construction standards and specifications contained in the 2015 International Building Code (IBC) and in the 2015 International Residential Code (IRC) or the latest edition thereof adopted by the Commonwealth of Pennsylvania, and ASCE 24 and 34 Pa. Code (Chapters 401 through 405, as amended) shall be utilized, where they are more restrictive.

B. Nonresidential structures.

- (1) In AE, A1-30 and AH Zones, any new construction or substantial improvement of a nonresidential structure shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation, or be designed and constructed so that the space enclosed below the regulatory flood elevation:
 - (a) Is floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water; and
 - (b) Has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy:
- (2) In A Zones, where no base flood elevations are specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated or completely floodproofed up to, or above, the regulatory flood elevation determined in accordance with § 197-18C of this chapter.
- (3) In AO Zones, any new construction or substantial improvement shall have their lowest floor elevated or completely floodproofed above the highest adjacent grade to at least as high as the depth number specified on the FIRM.
- (4) Any nonresidential structure, or part thereof, made watertight below the regulatory flood elevation shall be floodproofed in accordance with the W1 or W2 space classification standards contained in the publication entitled "Flood-Proofing Regulations" published by the U.S. Army Corps of Engineers (June 1972, as amended March 1992) or with some other equivalent standard. All plans and specifications for such floodproofing shall be accompanied by a statement certified by a registered professional engineer or architect which states that the proposed design and methods of construction are in conformance with the above referenced standards. There should be a statement submitted with the permit application and a statement submitted with the as-built floodproofing certificate prior to the issuance of the certificate of occupancy.

- (5) Any nonresidential structure that will be floodproofed must submit the following to the Floodplain Administrator along with the nonresidential floodproofing certificate and prior to the issuance of the certificate of occupancy:
 - (a) An inspection and maintenance plan detailing the annual maintenance of floodproofed components ensuring that all components will operate properly under flood conditions. Components that must be inspected include at a minimum:
 - [1] Mechanical equipment such as sump pumps and generators;
 - [2] Flood shields and closures;
 - [3] Walls and wall penetrations; and
 - [4] Levees and berms (as applicable).
 - (b) Flood emergency operation plan detailing the procedures to be followed during a flooding event, and must include information pertaining to how all components will operate properly under all conditions, including power failures. The design professional must produce the plan. An adequate plan must include the following:
 - [1] An established chain of command and responsibility with leadership responsibilities clearly defined for all aspects of the plan.
 - [2] A procedure for notification of necessary parties when flooding threatens and flood warnings are issued. Personnel required to be at the building should have a planned and safe means of ingress and should have no other emergency response duties during a flood event. Alternates should be assigned in the event that the primary persons responsible are unable to complete their assigned duties under the plan.
 - [3] A list of specific duties assigned to ensure that all responsibilities are addressed expeditiously. The locations of materials necessary to properly install all floodproofing components must be included in the list.
 - [4] An evacuation plan for all personnel or occupants; those without duties for the flood emergency as well as those with duties for implementing the plan. All possible ingress and egress routes must be identified.
 - [5] A periodic training and exercise program to keep personnel and occupants aware of their duties and responsibilities. Training drills should be held at least once a year and should be coordinated with community officials.
- (6) The design and construction standards and specifications contained in the 2015 International Building Code (IBC) and in the 2015 International Residential Code (IRC) or the latest revision thereof as adopted by the Commonwealth of

Pennsylvania, and ASCE 24 and 34 Pa. Code (Chapters 401 through 405, as amended) shall be utilized, where they are more restrictive.

C. Space below the lowest floor.

- (1) Fully enclosed space below the lowest floor (excluding basements) which will be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of floodwaters for the purpose of equalizing hydrostatic forces on exterior walls. The term "fully enclosed space" also includes crawl spaces.
- (2) Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
 - (a) A minimum of two openings having a net total area of not less than one square inch for every square foot of enclosed space installed on two separate walls.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

D. Historic structures. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this chapter must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

§ 197-24. Design and construction standards.

The following minimum standards shall apply for all construction and development proposed within any identified floodplain area:

A. Fill. If fill is used, it shall:

- (1) Extend laterally at least 15 feet beyond the building line from all points;
- (2) Consist of soil or small rock materials only. Sanitary landfills shall not be permitted;
- (3) Be compacted to provide the necessary permeability and resistance to erosion, scouring, or settling;
- (4) Be no steeper than one vertical to two horizontal feet unless substantiated data justifying steeper slopes are submitted to, and approved by the Floodplain

Administrator; and

- (5) Be used to the extent to which it does not adversely affect adjacent properties.
- B. Drainage facilities. Storm drainage facilities shall be designed to convey the flow of stormwater runoff in a safe and efficient manner. The system shall ensure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.
- C. Water and sanitary sewer facilities and systems.
- (1) All new or replacement water supply and sanitary sewer facilities and systems shall be located, designed and constructed to minimize or eliminate flood damages and the infiltration of floodwaters.
 - (2) Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into floodwaters.
 - (3) No part of any on-site waste disposal system shall be located within any identified floodplain area except in strict compliance with all state and local regulations for such systems. If any such system is permitted, it shall be located so as to avoid impairment to it, or contamination from it, during a flood.
 - (4) The design and construction provisions of the UCC and FEMA No. 348, Protecting Building Utilities From Flood Damages, and the International Private Sewage Disposal Code shall be utilized.
- D. Other utilities. All other utilities such as gas lines, electrical and telephone systems shall be located, elevated (where possible) and constructed to minimize the chance of impairment during a flood.
- E. Streets. The finished elevation of all new streets shall be no more than one foot below the regulatory flood elevation.
- F. Storage. All materials that are buoyant, flammable, explosive, or in times of flooding, could be injurious to human, animal, or plant life, and not listed in § 197-25, Development which may endanger human life, shall be stored at or above the regulatory flood elevation or floodproofed to the maximum extent possible.
- G. Placement of buildings and structures. All buildings and structures shall be designed, located, and constructed so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of floodwater.
- H. Anchoring.
- (1) All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
 - (2) All air ducts, large pipes, storage tanks, and other similar objects or components located below the regulatory flood elevation shall be securely

anchored or affixed to prevent flotation.

I. Floors, walls and ceilings.

- (1) Wood flooring used at or below the regulatory flood elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
- (2) Plywood used at or below the regulatory flood elevation shall be of a marine or water-resistant variety.
- (3) Walls and ceilings at or below the regulatory flood elevation shall be designed and constructed of materials that are water-resistant and will withstand inundation.
- (4) Windows, doors, and other components at or below the regulatory flood elevation shall be made of metal or other water-resistant material.

J. Paints and adhesives.

- (1) Paints and other finishes used at or below the regulatory flood elevation shall be of marine or water-resistant quality.
- (2) Adhesives used at or below the regulatory flood elevation shall be of a marine or water-resistant variety.
- (3) All wooden components (doors, trim, cabinets, etc.) used at or below the regulatory flood elevation shall be finished with a marine or water-resistant paint or other finishing material.

K. Electrical components.

- (1) Electrical distribution panels shall be at least three feet above the base flood elevation.
- (2) Separate electrical circuits shall serve lower levels and shall be dropped from above.

L. Equipment.

- (1) Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the regulatory flood elevation and shall be anchored to resist flotation, collapse, and lateral movement
- (2) Ductwork shall be elevated to or above the regulatory flood elevation or floodproofed to remain water-resistant.

M. Fuel supply systems. All gas and oil supply systems shall be designed to prevent the infiltration of floodwaters into the system and discharges from the system into floodwaters. Additional provisions shall be made for the drainage of these systems in the event that floodwater infiltration occurs.

N. Uniform Construction Code coordination. The standards and specifications contained in 34 Pa. Code (Chapters 401 through 405), as amended and not limited

to the following provisions, shall apply to the above and other sections and subsections of this chapter, to the extent that they are more restrictive and supplement the requirements of this chapter.

- (1) International Building Code (IBC) 2015 or the latest revision thereof as adopted by the Commonwealth of Pennsylvania: Secs. 801, 1202, 1403, 1603, 1605, 1612, 3402, and Appendix G.
- (2) International Residential Building Code (IRC) 2015 or the latest revision thereof as adopted by the Commonwealth of Pennsylvania: Secs. R104, R105, R109, R322, Appendix E, and Appendix J.

§ 197-25. Development that may endanger human life.

A. In accordance with the Pennsylvania Flood Plain Management Act, and the regulations adopted by the Department of Community and Economic Development as required by the Act, any new or substantially improved structure which will be used for the production or storage of any of the following dangerous materials or substances; or will be used for any activity requiring the maintenance of a supply of more than 550 gallons, or other comparable volume, of any of the following dangerous materials or substances on the premises; or will involve the production, storage, or use of any amount of radioactive substances, shall be subject to the provisions of this section, in addition to all other applicable provisions. The following list of materials and substances are considered dangerous to human life:

- (1) Acetone.
- (2) Ammonia.
- (3) Benzene.
- (4) Calcium carbide.
- (5) Carbon disulfide.
- (6) Celluloid.
- (7) Chlorine.
- (8) Hydrochloric acid.
- (9) Hydrocyanic acid.
- (10) Magnesium.
- (11) Nitric acid and oxides of nitrogen.
- (12) Petroleum products (gasoline, fuel oil, etc.).
- (13) Phosphorus.
- (14) Potassium.
- (15) Sodium.

- (16) Sulphur and sulphur products.
 - (17) Pesticides (including insecticides, fungicides, and rodenticides).
 - (18) Radioactive substances, insofar as such substances are not otherwise regulated.
- B. Within any Floodway Area, any structure of the kind described in Subsection A, above, shall be prohibited. Where permitted within any Identified Floodplain Area, any new or substantially improved residential structure of the kind described in § 197-25A, above, shall be elevated to remain completely dry up to at least 1 1/2 feet above base flood elevation and built in accordance with §§ 197-22, 197-23, and 197-24.
- C. Where permitted within any Identified Floodplain Area, any new or substantially improved nonresidential structure of the kind described in § 197-25A, above, shall be built in accordance with §§ 197-22, 197-23, and 197-24, including:
- (1) Elevated, or designed and constructed to remain completely dry up to at least 1 1/2 feet above base flood elevation, and
 - (2) Designed to prevent pollution from the structure or activity during the course of a base flood.
- D. Any such structure, or part thereof, that will be built below the regulatory flood elevation shall be designed and constructed in accordance with the standards for completely dry floodproofing contained in the publication "Flood-Proofing Regulations" (U.S. Army Corps of Engineers, June 1972 as amended March 1992), or with some other equivalent watertight standard.

§ 197-26. Special requirements for subdivisions and development.

All subdivision proposals and development proposals containing at least 50 lots or at least five acres, whichever is the lesser, in Identified Floodplain Areas where base flood elevation data are not available shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a conditional letter of map revision (CLOMR) and letter of map revision (LOMR). Submittal requirements and processing fees shall be the responsibility of the applicant.

§ 197-27. Special requirements for manufactured homes.

- A. Within any Floodway Area/District, manufactured homes shall be prohibited.
- B. Where permitted within any Identified Floodplain Area, all manufactured homes, and any improvements thereto, shall be:
- (1) Placed on a permanent foundation;
 - (2) Elevated so that the lowest floor of the manufactured home is at least 1 1/2 feet above base flood elevation; and

- (3) Anchored to resist flotation, collapse, or lateral movement.
- C. Equipment requirement.
 - (1) Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the regulatory flood elevation and shall be anchored to resist flotation, collapse, and lateral movement.
 - (2) Ductwork shall be elevated to or above the regulatory flood elevation or floodproofed to remain water-resistant.
- D. Installation of manufactured homes shall be done in accordance with the manufacturers' installation instructions as provided by the manufacturer. Where the applicant cannot provide the above information, the requirements of Appendix E of the 2015 International Residential Building Code or the U.S. Department of Housing and Urban Development's Permanent Foundations for Manufactured Housing, 1984 Edition, draft or latest revision thereto and 34 Pa. Code Chapter 401 through 405 shall apply.
- E. Consideration shall be given to the installation requirements of the 2015 IBC, and the 2015 IRC or the latest revision thereto as adopted by the Commonwealth of Pennsylvania, and 34 Pa. Code, as amended where appropriate and/or applicable to units where the manufacturers' standards for anchoring cannot be provided or were not established for the proposed unit(s) installation.

§ 197-28. Special requirements for recreational vehicles.

Recreational vehicles in Zones A, A1-30, AH and AE must either:

- A. Be on the site for fewer than 180 consecutive days; and
- B. Be fully licensed and ready for highway use; or
- C. Meet the permit requirements for manufactured homes in § 197-27.

ARTICLE V
Activities Requiring Special Permits

§ 197-29. General.

In accordance with the administrative regulations promulgated by the Department of Community and Economic Development to implement the Pennsylvania Flood Plain Management Act, the following activities shall be prohibited within any Identified Floodplain Area unless a special permit has been issued by the Borough of Dalton:

- A. The commencement of any of the following activities; or the construction, enlargement, or expansion of any structure used, or intended to be used, for any of the following activities:
 - (1) Hospitals.
 - (2) Nursing homes.
 - (3) Jails or prisons.
- B. The commencement of, or any construction of, a new manufactured home park or manufactured home subdivision, or substantial improvement to an existing manufactured home park or manufactured home subdivision.

§ 197-30. Application requirements for special permits.

Applicants for special permits shall provide five copies of the following items:

- A. A written request including a completed permit application form.
- B. A small-scale map showing the vicinity in which the proposed site is located.
- C. A plan of the entire site, clearly and legibly drawn at a scale of one inch being equal to 100 feet or less, showing the following:
 - (1) North arrow, scale and date;
 - (2) Topography based upon the North American Vertical Datum (NAVD) of 1988, showing existing and proposed contours at intervals of two feet;
 - (3) All property and lot lines including dimensions, and the size of the site expressed in acres or square feet;
 - (4) The location of all existing streets, driveways, other accessways, and parking areas, with information concerning widths, pavement types and construction, and elevations;
 - (5) The location of any existing bodies of water or watercourses, buildings, structures and other public or private facilities, including railroad tracks and facilities, and any other natural and man-made features affecting, or affected by, the proposed activity or development;
 - (6) The location of the floodplain boundary line, information and spot elevations concerning the base flood elevation, and information concerning the flow of

water including direction and velocities;

- (7) The location of all proposed buildings, structures, utilities, and any other improvements; and
 - (8) Any other information which the municipality considers necessary for adequate review of the application.
- D. Plans of all proposed buildings, structures and other improvements, clearly and legibly drawn at suitable scale showing the following:
- (1) Sufficiently detailed architectural or engineering drawings, including floor plans, sections, and exterior building elevations, as appropriate;
 - (2) For any proposed building, the elevation of the lowest floor (including basement) and, as required, the elevation of any other floor;
 - (3) Complete information concerning flood depths, pressures, velocities, impact and uplift forces, and other factors associated with the base flood;
 - (4) Detailed information concerning any proposed floodproofing measures, including the flood emergency operation plan and the inspection and maintenance plan;
 - (5) Cross-section drawings for all proposed streets, driveways, other accessways, and parking areas, showing all rights-of-way and pavement widths;
 - (6) Profile drawings for all proposed streets, driveways, and vehicular accessways including existing and proposed grades; and
 - (7) Plans and profiles of all proposed sanitary and storm sewer systems, water supply systems, and any other utilities and facilities.
- E. The following data and documentation:
- (1) Certification from the applicant that the site upon which the activity or development is proposed is an existing separate and single parcel, owned by the applicant or the client he represents;
 - (2) Certification from a registered professional engineer, architect, or landscape architect that the proposed construction has been adequately designed to protect against damage from the base flood;
 - (3) A statement, certified by a registered professional engineer, architect, landscape architect, or other qualified person which contains a complete and accurate description of the nature and extent of pollution that might possibly occur from the development during the course of a base flood, including a statement concerning the effects such pollution may have on human life;
 - (4) A statement certified by a registered professional engineer, architect, or landscape architect, which contains a complete and accurate description of the effects the proposed development will have on base flood elevation and flows;
 - (5) A statement, certified by a registered professional engineer, architect, or

landscape architect, which contains a complete and accurate description of the kinds and amounts of any loose buoyant materials or debris that may possibly exist or be located on the site below the base flood elevation and the effects such materials and debris may have on base flood elevation and flows;

- (6) The appropriate component of the Department of Environmental Protection's Planning Module for Land Development;
- (7) Where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection to implement and maintain erosion and sedimentation control;
- (8) Any other applicable permits such as, but not limited to, a permit for any activity regulated by the Department of Environmental Protection under Section 302 of Act 1978-166; and
- (9) An evacuation plan which fully explains the manner in which the site will be safely evacuated before or during the course of a base flood.

§ 197-31. Application review procedures.

Upon receipt of an application for a special permit by the Borough of Dalton, the following procedures shall apply in addition to those of Article III:

- A. Within three working days following receipt of the application, a complete copy of the application and all accompanying documentation shall be forwarded to the County Planning Commission by registered or certified mail for its review and recommendations. Copies of the application shall also be forwarded to the Borough of Dalton Planning Commission and Borough of Dalton Engineer for review and comment.
- B. If an application is received that is incomplete, the Borough of Dalton shall notify the applicant in writing, stating in what respect the application is deficient.
- C. If the Borough of Dalton decides to disapprove an application, it shall notify the applicant, in writing, of the reasons for the disapproval.
- D. If the Borough of Dalton approves an application, it shall file written notification, together with the application and all pertinent information, with the Department of Community and Economic Development, by registered or certified mail, within five working days after the date of approval.
- E. Before issuing the special permit, the Borough of Dalton shall allow the Department of Community and Economic Development 30 days, after receipt of the notification by the Department, to review the application and decision made by the Borough of Dalton.
- F. If the Borough of Dalton does not receive any communication from the Department of Community and Economic Development during the thirty-day review period, it may issue a special permit to the applicant.
- G. If the Department of Community and Economic Development should decide to disapprove an application, it shall notify the Borough of Dalton and the applicant,

in writing, of the reasons for the disapproval, and the Borough of Dalton shall not issue the special permit.

§ 197-32. Special technical requirements.

- A. In addition to the requirements of Article V of this chapter, the following minimum requirements shall also apply to any proposed development requiring a special permit. If there is any conflict between any of the following requirements and those in Article V of this chapter or in any other code, ordinance, or regulation, the more restrictive provision shall apply.
- B. No application for a special permit shall be approved unless it can be determined that the structure or activity will be located, constructed and maintained in a manner which will:
 - (1) Fully protect the health and safety of the general public and any occupants of the structure. At a minimum, all new structures shall be designed, located, and constructed so that:
 - (a) The structure will survive inundation by waters of the base flood without any lateral movement or damage to either the structure itself, or to any of its equipment or contents below the BFE.
 - (b) The lowest floor (including basement) will be elevated to at least 1 1/2 feet above base flood elevation.
 - (c) The occupants of the structure can remain inside for an indefinite period of time and be safely evacuated at any time during the base flood.
 - (2) Prevent any significant possibility of pollution, increased flood levels or flows, or debris endangering life and property.
- C. All hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Borough of Dalton and the Department of Community and Economic Development.

ARTICLE VI
Existing Structures in Identified Floodplain Areas

§ 197-33. Existing structures.

The provisions of this chapter do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to any existing structure, the provisions of § 197-34 shall apply.

§ 197-34. Improvements.

The following provisions shall apply whenever any improvement is made to an existing structure located within any Identified Floodplain Area:

- A. No expansion or enlargement of an existing structure shall be allowed within any Floodway Area/District that would cause any increase in BFE.
- B. No expansion or enlargement of an existing structure shall be allowed within AE Area/District without floodway that would, together with all other existing and anticipated development, increase the BFE more than one foot at any point.
- C. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure to an extent or amount of 50% or more of its market value shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of this chapter.
- D. The above activity shall also address the requirements of 34 Pa. Code, as amended, and the 2015 IBC and the 2015 IRC or most recent revision thereof as adopted by the Commonwealth of Pennsylvania.
- E. Within any Floodway Area/District (see § 197-18A), no new construction or development shall be allowed, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
- F. Within any AE Area/District without floodway (see § 197-18B), no new construction or development shall be located within the area measured 50 feet landward from the top-of-bank of any watercourse, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
- G. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure, to an extent or amount of less than 50% of its market value, shall be elevated and/or floodproofed to the greatest extent possible.

ARTICLE VII
Variances

§ 197-35. General.

If compliance with any of the requirements of this chapter would result in an exceptional hardship to a prospective builder, developer or landowner, the Borough of Dalton Zoning Hearing Board may, upon request, grant relief from the strict application of the requirements.

§ 197-36. Variance procedures and conditions.

- A. Requests for variances shall be considered by the Borough of Dalton Zoning Hearing Board in accordance with the procedures contained in § 197-16 and the following:
- (1) No variance shall be granted for any construction, development, use, or activity within any Floodway Area/District that would cause any increase in the BFE.
 - (2) No variance shall be granted for any construction, development, use, or activity within any AE Area/District without floodway that would, together with all other existing and anticipated development, increase the BFE more than one foot at any point.
 - (3) Except for a possible modification of the regulatory flood elevation requirement involved, no variance shall be granted for any of the other requirements pertaining specifically to development regulated by special permit (Article VI) or to development which may endanger human life (§ 197-25).
 - (4) If granted, a variance shall involve only the least modification necessary to provide relief.
 - (5) In granting any variance, the Borough of Dalton Zoning Hearing Board shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this chapter.
 - (6) Whenever a variance is granted, the Borough of Dalton Zoning Hearing Board shall notify the applicant in writing that:
 - (a) The granting of the variance may result in increased premium rates for flood insurance.
 - (b) Such variances may increase the risks to life and property.
 - (7) In reviewing any request for a variance, the Borough of Dalton Zoning Hearing Board shall consider, at a minimum, the following:
 - (a) That there is good and sufficient cause.
 - (b) That failure to grant the variance would result in exceptional hardship to

the applicant.

(c) That the granting of the variance will:

- [1] Neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense;
- [2] Nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.

(8) A complete record of all variance requests and related actions shall be maintained by the Borough of Dalton Zoning Hearing Board. In addition, a report of all variances granted during the year shall be included in the annual report to FEMA.

B. Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one-percent-annual-chance flood.

ARTICLE VIII

Definitions**§ 197-37. General.**

Unless specifically defined below, words and phrases used in this chapter shall be interpreted so as to give this chapter its most reasonable application.

§ 197-38. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY USE OR STRUCTURE — A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

BASE FLOOD — A flood which has a one-percent chance of being equaled or exceeded in any given year (also called the "100-year flood" or "one-percent-annual-chance flood").

BASE FLOOD DISCHARGE — The volume of water resulting from a base flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).

BASE FLOOD ELEVATION (BFE) — The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a one-percent or greater chance of being equaled or exceeded in any given year.

BASEMENT — Any area of the building having its floor below ground level on all sides.

BUILDING — A combination of materials to form a permanent structure having walls and a roof. Included shall be all manufactured homes and trailers to be used for human habitation.

DECLARATION OF LAND RESTRICTION (NONCONVERSION AGREEMENT) — A form signed by the property owner to agree not to convert or modify in any manner that is inconsistent with the terms of the permit and these regulations, certain enclosures below the lowest floor of elevated buildings and certain accessory structures. The form requires the owner to record it on the property deed to inform future owners of the restrictions.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION — The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD — A temporary inundation of normally dry land areas.

FLOOD INSURANCE RATE MAP (FIRM) — The Official Map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) — The official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

FLOODPLAIN AREA — A relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.

FLOODPROOFING — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURES — Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

IDENTIFIED FLOODPLAIN AREA — This term is an umbrella term that includes all of the areas within which the community has selected to enforce floodplain regulations. It will always include the area identified as the Special Flood Hazard Area on the Flood Insurance Rate Maps and Flood Insurance Study, but may include additional areas identified by the community. See §§ 197-17 and 197-18 for the specifics on what areas the community has included in the Identified Floodplain Area.

LOWEST FLOOR — The lowest floor of the lowest fully enclosed area (including basement). An unfinished, flood-resistant partially enclosed area, used solely for parking of vehicles, building access, and incidental storage, in an area other than a basement area is not considered the lowest floor of a building, provided that such space is not designed and built so that the structure is in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. The term includes park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective start date of this floodplain management ordinance and includes any subsequent improvements to such structures. Any construction started after November 1, 1978, and before the effective start date of this floodplain management chapter is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.

NEW MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

PERSON — An individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.

POST-FIRM STRUCTURE — A structure for which construction or substantial improvement occurred after December 31, 1974, or on or after the community's initial Flood Insurance Rate Map (FIRM) dated November 1, 1978, whichever is later, and, as such, would be required to be compliant with the regulations of the National Flood Insurance Program.

PRE-FIRM STRUCTURE — A structure for which construction or substantial improvement occurred on or before December 31, 1974, or before the community's initial Flood Insurance Rate Map (FIRM) dated November 1, 1978, whichever is later, and, as such, would not be required to be compliant with the regulations of the National Flood Insurance Program.

RECREATIONAL VEHICLE — A vehicle which is:

- A. Built on a single chassis;
- B. Not more than 400 square feet, measured at the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by a light-duty truck;
- D. Not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOOD ELEVATION — The base flood elevation (BFE) or estimated flood height as determined using simplified methods plus a freeboard safety factor of 1 1/2 feet. The freeboard safety factor also applies to utilities and ductwork.

SPECIAL FLOOD HAZARD AREA (SFHA) — An area in the floodplain subject to a one-percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or, AH.

SPECIAL PERMIT — A special approval which is required for hospitals, nursing homes, jails, and new manufactured home parks/subdivisions and substantial improvements to such existing parks, when such development is located in all or a designated portion of a floodplain.

START OF CONSTRUCTION — Includes substantial improvement and other proposed new development and means the date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days after the date of the permit and shall be completed within 12 months after the date of issuance of the permit unless a time extension is granted, in writing, by the Floodplain Administrator. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE — A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

SUBDIVISION — The division or redivision of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development; provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than 10 acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

SUBSTANTIAL DAMAGE — Damage from any cause sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% or more of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

UNIFORM CONSTRUCTION CODE (UCC) — The statewide building code adopted by the Pennsylvania General Assembly in 1999 applicable to new construction in all municipalities whether administered by the municipality, a third party or the Department of Labor and Industry. Applicable to residential and commercial buildings, the Code adopted the International Residential Code (IRC) and the International Building Code (IBC), by reference, as the construction standard applicable with the state floodplain construction. For coordination purposes, references to the above are made specifically to various sections of the IRC and the IBC.

VARIANCE — A grant of relief by a community from the terms of a floodplain management regulation.

VIOLATION — The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

ARTICLE IX
Enactment

§ 197-39. Effective date.

This chapter shall be effective on July 30, 2020, and shall remain in force until modified, amended or rescinded by Borough of Dalton, Lackawanna County, Pennsylvania.

Chapter 202**FURNACES, OUTDOOR****GENERAL REFERENCES**

Open burning — See Ch. 162.

§ 202-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

CLEAN WOOD — Wood that does not have paint, stains or other types of coatings and wood that has not been treated with substances, including but not limited to copper arsenate, creosote or pentachlorophenol, and wood pellets made from clean wood.

CODE ENFORCEMENT OFFICER — The Zoning Officer or other person appointed by the Borough of Dalton to administer and enforce this chapter, whose duties shall include responding to resident questions and complaints and performing other tasks as Borough Council may assign.

EXISTING OUTDOOR WOOD-FIRED BURNER/FURNACE — An outdoor wood-fired burner/furnace that was purchased and installed prior to the effective date of this chapter.

OUTDOOR WOOD-FIRED BURNERS/FURNACES — A fuel-burning device:

- A. Designed to burn wood or other manufacturer-approved fuel products (i.e., corn and coal);
- B. That the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g., garages); and
- C. That heats building space and/or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.

PERSON — Any individual, firm, partnership, corporation, association, institution, cooperative enterprise, municipality, municipal authority, governmental entity or agency, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

STACK or CHIMNEY — Any vertical structure enclosing a flue or flues that carries off smoke or exhaust from a solid-fuel-fired heating device or structure, including that part of the structure extending above a roof.

§ 202-2. Permit required.

Any person desiring to install an outdoor wood-fired burner/furnace within the Borough of Dalton shall obtain a permit from the Zoning Officer and shall pay a permit fee as set by the Borough Council by resolution.

Commencing upon the effective day of this chapter, prior to [date] of each calendar year the owner of the lot upon which an outdoor wood-fired burner/furnace is located shall apply for an operating permit which shall be valid for the period from [date] through [date] of the following calendar year. The owner shall pay all fees imposed by the Borough of Dalton for the application for such operating permit and the inspection of the outdoor wood-fired burner/furnace to determine compliance with this chapter.

§ 202-3. Suspension of permit.

- A. A permit issued pursuant to this chapter may be suspended as the Zoning Officer or other person appointed by the governing body to administer and enforce this chapter may determine to be necessary to protect the public health, safety and welfare of the residents of the Borough of Dalton if any of the following conditions occur:
- (1) Malodorous air contaminants from the outdoor wood-fired burner/furnace are detectable outside the property of the person on whose land the outdoor wood-fired burner/furnace is located;
 - (2) The emission from the outdoor wood-fired burner/furnace interferes with the reasonable enjoyment of life on neighboring property.
 - (3) The emissions from the outdoor wood-fired burner/furnace cause damage to vegetation on neighboring property.
 - (4) The emissions from the outdoor wood-fired burner/furnace are or may be harmful to human or animal health.
 - (5) The burning of any material referenced in § 202-7B of this chapter.
- B. A suspended permit may be reinstated once the condition which resulted in suspension is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition which has previously resulted in suspension of a permit shall be considered a violation of this chapter subject to the penalties provided within this chapter.

§ 202-4. Existing outdoor wood-fired burners/furnaces.

Any outdoor wood-fired burners/furnaces in existence on the effective date of this chapter shall be permitted to remain, provided that the owner applies for and receives a permit from the Zoning Officer within one year of the effective date of this chapter. If the owner of an existing outdoor wood-fired burner/furnace does not receive a permit within one year of the effective date of this chapter, the outdoor wood-fired burner/furnace shall be removed and is subject to the regulations provided for in § 202-5 of this chapter.

§ 202-5. Installation of outdoor wood-fired burners/furnaces.

Requirements:

- A. Present a plan showing all property lines, the locations and distances of all dwellings or occupied buildings on adjoining properties, and the proposed location of the outdoor wood-fired burner/furnace.

- B. Locate the outdoor wood-fired burner/furnace at least 250 feet from any occupied structure not located on the lot on which the outdoor wood-fired burner/furnace will be located.
- C. Locate the outdoor wood-fired burner/furnace at least 150 feet from all property lines.
- D. The outdoor wood-fired burner/furnace shall have a stack or chimney that extends to a minimum height of the residential structure roof peak of which the outdoor wood-fired burner/furnace is servicing plus two feet. If there are any residential structures within 250 feet, the stack or chimney shall extend at least as high above the ground surface as the height of the roof peaks of all such residences plus two feet. The maximum height of the outdoor wood-fired burner/furnace stack or chimney shall not exceed 50 feet and shall not exceed the maximum height requirement in that specific zoning district. Should a new residential structure be built or an existing residential structure be modified within the two-hundred-and-fifty-foot radius, the outdoor wood-fired burner/furnace stack or chimney height shall be raised to match the height of the new or modified structure, up to the maximum height indicated above.
- E. Present evidence that the applicant has obtained a Uniform Construction Code permit for the installation of the outdoor wood-fired burner/furnace and its connection to the mechanical system of the structure it will serve.
- F. Provide a copy of the manufacturer's specifications and instructions, which the applicant agrees to comply with and not alter at any time.
- G. Demonstrate that the outdoor wood-fired burner/furnace has been laboratory tested and listed to comply with appropriate safety standards such as UL (Underwriters' Laboratories) or ANSI (American National Standards Institute) standards.
- H. All outdoor wood-fired burners/furnaces shall be equipped with properly functioning spark arrestors.
- I. The application shall be signed by all owners of the lot on which the outdoor wood-fired burner/furnace will be located and by the contractor installing the outdoor wood-fired burner/furnace.

§ 202-6. Replacements.

If an outdoor wood-fired burner/furnace is replaced or upgraded, a permit shall be required pursuant to § 202-2 of this chapter and shall comply with all sections of this chapter.

§ 202-7. Use of outdoor wood-fired burner/furnace.

- A. The only substance that may be burned in an outdoor wood-fired burner/furnace is clean wood (see definition, § 202-1 of this chapter).
- B. No person shall burn any of the following in an outdoor wood-fired burner/furnace:
 - (1) Any wood that does not meet the definition of clean wood.

- (2) Tires.
 - (3) Lawn clippings or yard waste.
 - (4) Rubbish or garbage, including but not limited to food wastes, food packaging or food wraps.
 - (5) Materials containing plastic.
 - (6) Materials containing rubber.
 - (7) Waste petroleum products.
 - (8) Paint and paint thinners.
 - (9) Any type of paper/cardboard.
 - (10) Construction and demolition debris (such as shingles).
 - (11) Plywood or other composite wood products.
 - (12) Particleboard.
 - (13) Manure.
 - (14) Animal carcasses.
 - (15) Asphalt products.
 - (16) Used cooking oils.
- C. The outdoor wood-fired burner/furnace shall at all times be operated and maintained in accordance with the manufacturer's specifications.
- D. The outdoor wood-fired burner/furnace shall be maintained and operated in compliance with all emissions and air quality standards promulgated by the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection or other relevant state or federal agency.
- E. Any ash or other by-products from the operation of the outdoor wood-fired burner/furnace shall be disposed of in accordance with all applicable laws.

§ 202-8. Operation schedule.

Outdoor wood-fired burners/furnaces may be operated all year long.

§ 202-9. Enforcement and penalties.

- A. Enforcement officer. The Borough of Dalton shall appoint an individual, agency or firm to serve as the enforcement officer who shall be responsible for enforcing the terms of this chapter.
- B. Duties of enforcement officer.
- (1) Inspection. The Zoning Officer and any other individual representing the Borough of Dalton whose presence is necessary to complete the inspection

may inspect any premises, building or structure in accordance with § 202-9C of this chapter to determine whether or not a violation of this chapter exists.

- (2) Action. Whenever an inspection disclosed a violation of this chapter, the Zoning Officer shall prepare a report detailing the violation and a recommendation regarding how the violation can be corrected. The Zoning Officer, upon authorization by the Council of the Borough of Dalton, shall issue a written notice to the owner and/or the occupant of the premises as set forth in § 202-9D, along with a copy of the report.
 - (3) Hearing appearance. The Zoning Officer shall appear at all hearings conducted in accordance with § 202-9F and testify as to the violation.
- C. Inspections; permission. The Zoning Officer and any other agent so authorized by the Borough of Dalton may inspect any premises to determine whether any violations of this chapter exist. Prior to entering upon any property to conduct an inspection, the Zoning Officer shall obtain the permission of the owner or occupant of the property to conduct the inspection. If after due diligence the Zoning Officer is unable to obtain such permission, the Zoning Officer shall have the authority to conduct the necessary inspection in accordance with this chapter and the applicable laws of the commonwealth and, if necessary, petition a competent court with jurisdiction for a court order authorizing the inspection. If a court orders the inspection, the defendant named in the order shall reimburse the Borough of Dalton for the costs of filing the petition and reasonable attorneys' fees.
- D. Notice of violation. Whenever an inspection discloses that a violation of the chapter exists, the Zoning Officer shall, upon authorization by the Borough of Dalton, issue a notice of violation to the owner and/or occupant of the premises. The notice shall:
 - (1) Be in writing.
 - (2) Include a statement of the reasons why the notice is being issued.
 - (3) Contain a copy of the Zoning Officer's inspection report detailing the conditions constituting the violation, contain an outline of the remedial action required to come into compliance with the chapter and state a reasonable time to rectify the violation.
 - (4) Inform the owner of the right to request a hearing before the Borough of Dalton as set forth in § 202-9F.
 - (5) Inform the owner/occupant that, should there be a failure to comply with the notice or request a hearing, the individual(s) will be subject to the penalties set forth in § 202-9G of the chapter, and the costs and expenses, including attorney's fees, of enforcing the terms of the chapter.
 - (6) Except in emergency cases, the notice shall be sent by registered mail or by certificate of mailing or personally delivered to the owner and/or occupant of the premises upon which the violation exists. Where the owner is absent from the Borough of Dalton, all notices shall be deemed to be properly served if a copy of the notice is served upon the owner personally, a copy of the notice is sent by registered mail or by certificate of mailing to the last known address of

the owner, regardless of proof of receipt, and is posted in a conspicuous place on or about the premises affected by the notice or the owner is served with such notice by any other method authorized under the laws of the Commonwealth of Pennsylvania.

- E. Emergency cases. Whenever the Zoning Officer finds that an emergency exists which requires immediate action to protect the public health, safety and welfare, he/she may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as is necessary to correct the violation and eliminate the emergency. Notwithstanding the other provisions of this chapter, such order shall be effective immediately.
- F. Hearings.
 - (1) Right to hearing. Any person affected by any notice which has been issued in accordance with the enforcement of any provision of this chapter may request and shall be granted a hearing on the matter before the Council of the Borough of Dalton, provided that such person files a written request for the hearing within 10 days after service of the notice. The request shall contain a brief statement regarding the reasons for the request.
 - (2) Scheduling and conduct of the hearing. Upon receipt of a request for a hearing, a time and place for the hearing shall be scheduled and advertised in accordance with applicable municipal requirements. All hearings shall be conducted in accordance with the Local Agency Act. The hearing shall be scheduled no later than 60 days after the day on which the request was received. At the hearing, the person requesting the hearing shall be given the opportunity to be heard and show cause why the violation described in the notice should not be abated.
 - (3) The Council of the Borough of Dalton action. After such hearing the Council of the Borough of Dalton shall issue a written decision sustaining the notice, modifying the notice and attaching conditions or withdrawing the notice. If the Council of the Borough of Dalton sustains the notice, it shall be deemed to be a final order effective immediately.
 - (4) Right to appeal. Any aggrieved party may appeal the final order to the Court of Common Pleas of Lackawanna County in accordance with the provisions of the Local Agency Act. Such appeal shall not constitute a stay from the requirements of the final order unless an order to that effect is obtained from the court.
 - (5) Fees. The person requesting the hearing shall pay the fee for such hearing as may be established by resolution of the Council of the Borough of Dalton.
- G. Remedies and penalties.
 - (1) Any person who has violated or permitted the violation of any provisions of this chapter shall, upon judgment thereof by any Magisterial District Judge, be sentenced to pay a fine of not less than \$100 nor more than \$2,500 for each separate offense and, in default of payment of such fine, may be sentenced to imprisonment for up to 90 days for each separate offense. Each day of

violation shall be a separate offense for which a separate conviction may be sought. All judgments, costs, interests and reasonable attorneys' fees collected for a violation of this chapter shall be paid over to the Borough of Dalton.³¹

- (2) In addition to the fines, judgments, costs and/or imprisonment remedies set forth above, the Borough of Dalton reserves the right to pursue all other available remedies at law or in equity under the laws of the Commonwealth of Pennsylvania.

§ 202-10. Municipality exempt from liability.

The Borough of Dalton and its agents, officials and representatives shall not, under any circumstances, be liable or responsible for damages caused to any person or property by reason of the issuance of any permit under the provisions of this chapter or by reason of the conduct of any burning activity in compliance with the terms and provisions of this chapter. The person or party responsible for any such burning activity shall bear sole liability of any damages caused as a result thereof.

§ 202-11. Authority.

This chapter is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

31. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 209**GATHERINGS, LARGE****GENERAL REFERENCES**

Solid waste disposal and recycling — See Ch. 290.

Vehicles and traffic — See Ch. 350.

§ 209-1. Purpose and intent.

It is the purpose and intent of the Borough to establish a process to address large gatherings within the Borough in residential areas. Applications for permits will be required which will address the issues of large gatherings, including parking, bathroom facilities, traffic issues, garbage and security. The Borough of Dalton will review the permit application in order to preserve and protect public safety and the rights of quiet and safe enjoyment of residentially zoned areas.

§ 209-2. Applicability.

- A. This chapter shall apply as follows: (Note that zoning is defined by the approved Zoning Map, as amended from time to time, for the Borough of Dalton, and that zoning is not modified by permitted uses of the property, zoning variances or special exceptions.)
- (1) In all residential zoning districts including R-1 and R-2 to all gatherings of 50 people or more.
 - (2) In all commercial and nonresidential zoning districts to all gatherings of 250 people or more.
- B. The following is a list of exceptions to this chapter:
- (1) Private parties held in a residence.
 - (2) Gatherings sponsored by the Borough of Dalton.
 - (3) Gatherings sponsored by the Dalton Fire Company.
 - (4) Gatherings of religious ceremonies if those gatherings occur within a building and the number of people attending the event is limited to the number allowed pursuant to the building use limitation.

§ 209-3. Establishment of permit application process.

The Borough of Dalton shall establish a permit application process. The application shall have no charge but be required to be filed no less than 20 business days prior to the event. The permit shall be on a form designated by the Borough Council. The application form will contain the following elements:

- A. Address for the event, name of owner of that address and who will be the party

responsible for the event.

- B. Purpose of the event and the number of people attending.
- C. Date and time of the event.
- D. How will the party responsible address bathroom facilities?
- E. How will the party responsible address garbage collection?
- F. How will the party responsible address security?
- G. How will the party address parking and traffic control?

§ 209-4. Issuing of permit.

- A. A permit will be issued in the event that Dalton Borough Council is satisfied that the event owner has a responsible plan to address the impact of the event on public safety and rights of quiet and safety to the residents of the area.
- B. Consideration will be given to the history of the party responsible for the event and their history in managing events.

§ 209-5. Inspections for violations.

Adherence to this chapter does not relieve any person, legal entity or agent from any other obligations set forth in any applicable code(s), which may apply to the property. It is the responsibility of the Dalton Borough Police Department to enforce the tenets of this chapter.

§ 209-6. Violations and penalties.

- A. Any person who shall conduct a gathering of 50 persons or more in a residentially zoned location without a valid permit shall be in violation of this chapter and subject to the following fines:

Description of Violation	Civil Penalty
Failure to obtain a permit for a gathering of 50 to 100, first offense	\$100
Each subsequent offense for a gathering of 50 to 100	\$250
Failure to obtain a permit for a gathering over 100, first offense	\$500
Each subsequent offense for a gathering over 100	\$1,000

- B. In addition to the penalties, any costs incurred by the Borough will be included in the penalty.

§ 209-7. Amendments.

Registration and penalty fees outlined in this chapter may be modified by a resolution

passed and adopted by the Council of the Borough of Dalton.

Chapter 224

INSURANCE

ARTICLE I
Fire Insurance Claims
[Adopted 5-12-1994 by Ord. No. 5-1994]

§ 224-1. Designated officer.

The Secretary of the Borough of Dalton is hereby appointed as the designated officer who is authorized to carry out all responsibilities and duties stated herein.

§ 224-2. Municipal certificate required; claims payment procedure.

- A. No insurance company, association or exchange (hereinafter the insuring agent") doing business in the Commonwealth of Pennsylvania shall pay a claim of a named insured for fire damage to a structure located within the Borough of Dalton where the amount recoverable for the fire loss to the structure under all policies exceeds \$7,500, unless the named insured or the insuring agent is furnished by the Secretary of the Borough of Dalton with a municipal certificate pursuant to § 508(B) of Act 98 of 1992 and unless there is compliance with § 508(C) and (D) of Act 98 of 1992 and the provisions of this article.³²
- B. Where, pursuant to § 508(B)(1)(I) of Act 98 of 1992, the Secretary issues a certificate indicating that there are no delinquent taxes, assessments, penalties or user charges against real property, the insuring agent shall pay the claim of the named insured; provided however, that if the loss is agreed upon by the named insured and the insuring agent equals or exceeds 60% of the aggregate limits of liability on all fire policies covering the building restructure, the following procedures must be followed:
- (1) The insuring agent shall transfer from the insurance proceeds to the Secretary of the Borough of Dalton in the aggregate of \$2,000 for each \$15,000 of a claim and for each fraction of that amount of a claim, this section to be applied such that, if the claim is \$15,000 or less, the amount transferred to the Borough of Dalton shall be \$2,000; or³³
 - (2) If at the time of a loss report agreed to between the named insured and the insuring agent the named insured has submitted a contractor's signed estimate of the costs of removing, repairing or securing the building or other structures in an amount less than the amount calculated under the foregoing transfer formula, the insuring agent shall transfer to the Borough of Dalton from the insurance proceeds the amount specified in the estimate.³⁴
 - (3) The transfer of proceeds shall be on pro rata basis by all companies, associations or exchanges insuring the building or other structure.
 - (4) After the transfer, the named insured may submit a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure, and the Secretary of the Borough of Dalton shall return the amount of the funds

32. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

33. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

34. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

transferred to the Borough of Dalton in excess of the estimate to the named insured, if the Borough of Dalton has not commenced to remove, repair or secure the building or other structure.

- (5) Upon receipt of proceeds under this section, the Borough of Dalton shall do the following:
 - (a) The Secretary of the Borough of Dalton shall place the proceeds in the separate fund to be used solely as security against the total costs of removing, repairing or securing the building or structure which are incurred by the Borough of Dalton. Such costs shall include, without limitation, any engineering, legal or administrative costs incurred by the municipality in connection with such removal, repair or securing of the building or any proceedings related thereto;
 - (b) It is the obligation of the insuring agent when transferring the proceeds to provide the Borough of Dalton with the name and address of the named insured. Upon receipt of the transferred funds and the name and address of the named insured, the designated officer shall contact the named insured, certify that the proceeds have been received by the Borough of Dalton and notify the named insured that the procedures under this subsection shall be followed;
 - (c) When repairs, removal or securing of the building or other structure have been completed in accordance with all applicable regulations and orders of the Borough of Dalton and the required proof of such completion received by the Secretary of the Borough of Dalton, and if the Borough of Dalton has not incurred any costs for repairs, removal or securing, the fund shall be returned to the named insured. If the Borough of Dalton has incurred costs for repairs, removal or securing of the building or other structure, the cost shall be paid from the fund, and if excess funds remain, the Borough of Dalton shall transfer the remaining funds to the named insured; and
 - (d) To the extent that interest is earned on proceeds held by the Borough of Dalton pursuant to this section and not returned to the named insured, such interest shall belong to the Borough of Dalton. To the extent that the proceeds are returned to the named insured, interest earned on such proceeds shall be distributed to the named insured at the time that the proceeds are returned.
- (6) Nothing in this article shall be construed to limit the ability of the Borough of Dalton to recover any deficiency. Furthermore, nothing in this article shall be construed to prohibit the Borough of Dalton and the named insured from entering into an agreement that permits the transfer of funds to the named insured or some other reasonable disposition of the damaged property is negotiated.

§ 224-3. Additional regulations.

The governing body may fix reasonable fees to be charged for municipal activities of

certificates and bills, performance of inspections and opening separate fund accounts.

§ 224-4. Violations and penalties.³⁵

An owner of property, any named insured or any insuring agent who violates this article shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person, on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this article and each day the same is continued shall be deemed a separate offense.

§ 224-5. Authority.

This article is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

35. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 236**LITTERING****§ 236-1. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

HANDBILLS — Any printed or written matter, sample, device, circular, leaflet, pamphlet, paper, magazine, booklet or other printed or otherwise reproduced original or copy of any matter or material which advertises for sale any product or directs attention to any business, mercantile or commercial establishment or activity or any meeting, theatrical performance, exhibition or event of any kind.

LITTER — Includes garbage, refuse, ashes, rubbish and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

PARK — A park, square, playground, pool, recreation center or other public area in the municipality owned or used by the municipality and devoted to recreation.

PRIVATE PREMISES — Any dwelling, house, building or other structure or parking lot designed or used either wholly or in part for residential, industrial or commercial purposes, whether inhabited or temporarily or continuously uninhabited or vacant, including any yards, grounds, walks, driveways, porches, steps, vestibules or mailboxes appurtenant to such premises.

PUBLIC PLACE — All streets, sidewalks, boulevards, alleys or other public ways and all public parks, squares, spaces, grounds and buildings.

PUBLIC RECEPTACLES — A receptacle placed by the municipality at various locations for the reception of litter, other than household or commercial refuse.

VEHICLE — Every device in, upon or by which any person or property is or may be transported or drawn upon a highway.

§ 236-2. Disposal of litter in receptacles.

No person shall place, throw, drop or deposit litter in or upon any street, sidewalk, park, stream or other body of water or other place within the municipality, except in public receptacles or in authorized private receptacles.

§ 236-3. Proper disposal to prevent scattering.

No person shall place or deposit litter in public receptacles or authorized private receptacles except in such manner as to prevent it from being scattered or carried by the elements to any street, sidewalk or other public place or upon private premises.

§ 236-4. Deposit from vehicles or aircraft.

No person in a vehicle shall throw or deposit litter upon any street, sidewalk or other public place or private premises. No person shall operate a truck or other vehicle unless such vehicle is so constructed or loaded as to prevent its contents from falling, being blown or deposited upon any street or public place. No person shall throw out, drop or

deposit any litter, handbill or other object from aircraft so as to cause it to fall within the municipality.

§ 236-5. Litter on sidewalks.

Persons owning or occupying private premises shall make reasonable efforts to keep the sidewalks in front of such premises free of litter. No person shall sweep into or deposit in any gutter, street or public place the accumulation of litter from any building or lot or from any public or private sidewalk or driveway.

§ 236-6. Litter on private premises.

The owner or person in control of any private premises shall at all times maintain the premises free from litter. No person shall throw or deposit litter on any private premises or on any open or vacant lot or premises, whether or not owned or controlled by such person, except that such owner or person in control may maintain authorized private receptacles for deposit, collection or temporary storage of litter.

§ 236-7. Handbill distribution.

No person shall place or deposit any handbill in or upon any vehicle or premises without the acceptance thereof by the owner or occupant of such vehicle or premises, provided that this section does not prohibit or otherwise regulate the delivery of any matter by the United States Postal Service.

§ 236-8. Dumping inside municipality.

The dumping, throwing or placing of ashes, scrap, garbage, rubbish or refuse of any kind within the municipality, by any person, is hereby declared to be a nuisance and is prohibited.

§ 236-9. Dumping into public or private receptacles.

The dumping of household or commercial refuse within the municipality into a public receptacle or into another private receptacle without the owner's permission by any person is hereby declared a nuisance and is prohibited.

§ 236-10. Vandalism committed by minors.³⁶

If any person, parent or adult knowingly permits a minor child to commit any violation of this chapter or knowingly permits the minor to commit acts of vandalism, the parent or adult shall be responsible for any costs which may be incurred by the municipality or any designated sponsored group in abating the nuisance or repairing the vandalized property.

§ 236-11. Tampering with receptacles.³⁷

No person shall steal, upset, mutilate, deface or tamper with public or private receptacles

36. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

37. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

or cause the contents thereof to be spilled or scattered in or upon any public place or private premises. If any provision of this section is violated, the person or firm shall be required to pay incurred costs for repairing the damage, in addition to any penalties hereafter prescribed.

§ 236-12. Preventing scattering of litter prior to pickup.

All litter that is subject to movement by the elements shall be secured by the owner and/or occupant of the premises prior to the regularly scheduled pickup before the litter is scattered by the elements to adjoining public or private places.

§ 236-13. Construction or demolition sites.

The general contractor in charge of any construction or demolition site shall maintain the site in such a manner that litter will be prevented from being scattered by the elements to adjoining premises. All litter from construction, demolition or any related activities shall be picked up at the end of each workday and placed in containers in order to prevent scattering either on or to adjoining premises. Each day that the provisions of this section are violated shall be considered a separate and additional violation.

§ 236-14. Loading and unloading.

The person owning, operating or in control of a loading or unloading dock shall at all times maintain the dock area free of litter in such a manner that litter will be prevented from being carried by the elements to adjoining premises.

§ 236-15. Disposal of litter in rivers, streams or other bodies of water.

No person shall place, throw, drop, dump or deposit litter in any or along the banks of any river, stream or other body of water within the municipality.

§ 236-16. Violations and penalties.

- A. Any person who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this chapter and each day the same is continued shall be deemed a separate offense.³⁸
- B. Any person, firm or corporation who violates any of the provisions of this chapter shall be issued a "litter offense notice," which shall be a form delivered by the Borough's Treasurer. The violator shall be required to pay the appropriate fine or penalty at the Municipal Building within 10 days from the notice of violation. The failure to make said payment within 10 days shall result in a summons being issued

38. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

in accordance with law.

§ 236-17. Anti-litter account.

The Borough's Treasurer may open a special account to be known as the "anti-litter account," and any funds derived from violations of this chapter shall be deposited in this account. Said funds shall be used to promote and effect this chapter.

§ 236-18. Designated appropriate municipal employees.

The Borough Council is hereby authorized to designate the appropriate municipal employees to enforce the provisions of this chapter.

Chapter 255**PARKS AND RECREATION AREAS****GENERAL REFERENCES**

Large gatherings — See Ch. 209.

Litter — See Ch. 236.

§ 255-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

PARK or PARKS — Unless specifically limited, shall be deemed to include all parks, playgrounds, recreation areas, tennis courts, recreation structures and facilities, and also entrances and approaches thereto, and all other land or property or structures now or hereafter owned or acquired by the Borough of Dalton for park or recreational purposes.

PERSON — Any natural person, corporation, organization or persons, company, association or partnership.

RULES AND REGULATIONS — Any rules and regulations hereby or hereafter promulgated by Dalton Borough Council under the authority herein conferred.

§ 255-2. Park hours.

The Streamside Park shall be opened daily commencing at 6:00 a.m. and extending until 11:00 p.m. In no event shall any person be permitted to be in attendance at the Streamside Park, or any other park or recreational facility in Dalton Borough, between the hours 11:00 p.m. and sunrise, unless special permission is granted by Dalton Borough Council.

§ 255-3. Prohibited conduct.

No person in attendance at a park shall:

- A. Injure, deface, remove, cut or damage any of the trees, plants, shrubs, turf, buildings, structures, signs or fixtures, or any other property of the Borough of Dalton located within the park.
- B. Litter any area of the park with garbage, paper, bottles, cans or other waste material, nor dispose of the same in any way except in receptacles designated for such purpose.
- C. Kindle or maintain any fire in the park except in fireplaces or areas specially designated for that purpose and located by authority of Dalton Borough Council.
- D. Remove any bench, seat, table or other appliance without permission of Dalton Borough Council.

- E. Injure, deface, destroy or remove any notice, rule or regulation posted at any place within the park by authority of Dalton Borough Council; nor shall any notice or placard be posted within the park other than by authority of Dalton Borough Council.
- F. Set up any booth, table or stand for the sale of any article or service whatsoever within the limits of the park without permission of Dalton Borough Council; distribute, sell, service or rent any services or commodity or solicit for any purpose without permission of Dalton Borough Council.
- G. Operate, stop or park any vehicle, bicycle or other means of conveyance except in areas where permitted or designated by proper authority of Dalton Borough Council, or operate the same in a reckless or negligent manner or in excess of any posted speed limit or in such a manner as to become a nuisance to other area users.
- H. Operate commercial vehicles, unless providing authorized services.
- I. Bring onto the premises, possess or consume any alcoholic beverage or illegal drugs of any kind; no person shall enter the park in an intoxicated state or otherwise be under the influence of alcohol or illegal drugs.
- J. Carry or discharge any firearms, slingshots, firecrackers, fireworks or other missile-propelling instruments or explosives or arrows, or other dangerous weapons which have such properties as to cause annoyance or injury to any person or property, unless permission has been granted by Dalton Borough Council in designated areas; police officers in the performance of their duties will be exempt from these provisions.
- K. Play ball, swim, pitch horseshoes, engage in archery, camp or engage in finding buried objects with special detectors or participate in any other form of recreation, sporting endeavor or pastime, except in those areas which may be designated from time to time for that purpose by Dalton Borough Council.
- L. Disrobe or change clothing except in buildings or facilities made available for that purpose.
- M. Disturb the peace by any conduct so as to annoy any other person using the park for recreational purposes.
- N. Operate a snowmobile, minibike, motorcycle or any vehicles, recreational or otherwise, except on designated roads, trails or areas set aside for their use.
- O. Use threatening, abusive, insulting, profane or obscene language or words.
- P. Commit any disorderly or immoral acts.
- Q. Hold any public meeting or rally with more than five persons or engage in any marching or driving as members of a military, political or other organization without permission of the Dalton Borough Council, which requires a statement of information, including the name of the organization, its purpose, number of persons expected to be invited, expected duration and name(s) of person(s) in charge.
- R. Disobey a proper order of a police officer or disobey or disregard or fail to comply

with any rule or regulation, warning, prohibition, instruction or direction given by an authorized person and posted or displayed by sign, notice, bulletin, card, poster, or when notified or informed as to its existence by Dalton Borough Council or an authorized person.

- S. Hunt for, capture or kill, or attempt to capture or kill, or aid or assist in the capturing or killing of, in any manner, any wild bird or wild animal of any description, either game or otherwise; and to that end, it is unlawful for any person to carry onto or possess in any park a shotgun or rifle or pistol or firearm of any make or kind unless specific permission is granted for a designated area by authority of Dalton Borough Council.
- T. Allow pets to run at large out of control.

§ 255-4. Fishing.

All laws pertaining to fishing in the commonwealth shall apply to fishing in parks and recreation areas, and provisions thereof are hereby incorporated by reference.

§ 255-5. Reservation for specific uses.

The Streamside Park, the pavilion at Streamside Park and other parks and recreation facilities shall be available to Dalton residents on a first-come, first-serve basis, unless otherwise reserved. The Streamside Park athletic fields, the Streamside Park pavilion and/or other parks and recreational facilities can be reserved by Dalton residents by obtaining a permit from the Dalton Borough Secretary. Permits are required in order to schedule and reserve specific events at the Streamside Park pavilion or at other locations within the Streamside Park, the athletic fields or tennis courts located therein.

§ 255-6. Authorization to promulgate additional rules.

Dalton Borough Council may establish additional rules and regulations as deemed necessary and may post specific rules and regulations at park facilities.

§ 255-7. Authority to close areas.

Recreation facilities which become hazardous for public use due to weather, water, fire or unforeseeable conditions may be closed only at the discretion of Dalton Borough Council and/or Dalton Borough Police Department.

§ 255-8. Enforcement.

The police officers of the Borough of Dalton are charged with enforcement of the provisions of this chapter as well as all duly adopted regulations.

§ 255-9. Violations and penalties.³⁹

Any person, firm or corporation who shall violate any provision of this chapter shall, upon being found liable therefor, pay a fine of not more than \$600 plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings.

39. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 255-10. Authority.

This chapter is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

Chapter 263**PROPERTY MAINTENANCE****GENERAL REFERENCES**

Dangerous buildings — See Ch. 154.

Abandoned vehicles — See Ch. 341.

Solid waste — See Ch. 290.

Zoning — See Ch. 400.

Trees — See Ch. 322.

§ 263-1. Short title.

This chapter shall be known and cited as the "Dalton Borough Property Maintenance Ordinance."

§ 263-2. Preface.

Recognizing the need within Dalton Borough to establish certain minimum health and safety requirements for those buildings, structures or properties which are used or associated with human occupancy, this chapter hereby establishes standards which the Borough of Dalton considers to be fair and essential in meeting those minimum requirements.

§ 263-3. Authority.

This chapter and the objectives leading to its enactment are authorized by the Dalton Borough Code.

§ 263-4. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BUILDING — A roofed structure, enclosed by one or more walls, for the shelter, housing, storage or enclosure of persons, goods, materials, equipment or animals.

COURT — An open and unoccupied space on a lot enclosed on at least three sides by the walls of a building.

GARBAGE — Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

INFESTATION — The presence of insects, rodents, vermin and/or other pests.

LOT — Plot, tracts, premises or parcel of land, with or without improvements thereto.

OWNER — Any person or persons, jointly or severally, firm, corporation or other entity, which, either by conveyance or inheritance or otherwise, is vested with the title to a lot and/or improvements thereto or who retains the exclusive control of such a lot and/or improvements thereto in his capacity as a legal representative, such as an administrator, trustee, executor, etc.

REFUSE — All putrescible and nonputrescible solid wastes, including garbage, rubbish, ashes, dead animals and market and industrial wastes.

UNOCCUPIED HAZARD — Any building, or part thereof, or man-made structure, which remains unoccupied for a period of more than six months, with either doors, windows or other openings broken, removed, boarded or sealed up, or any building under construction upon which little or no construction work has been performed for a period of more than six months.

YARD — Any open space on the same lot with a building and for the most part unobstructed from the ground up.

§ 263-5. Application.

The provisions of this chapter shall supplement local laws, ordinances or regulations existing in Dalton Borough or those of the Commonwealth of Pennsylvania. Where a provision of this chapter is found to be in conflict with any provision of local law, ordinance, code or regulations or those of the Commonwealth of Pennsylvania, the provision which is more restrictive or which establishes the higher standard shall prevail.

§ 263-6. Buildings and structures.

- A. No owner of any building or structure shall fail to take steps and perform such maintenance thereto as may be required from time to time to ensure the property is safe, sound, sanitary and secure and does not present a health and/or safety hazard to surrounding properties and to the general populace.
- B. No owner of any unoccupied building or structure shall fail to take such steps as may be required to ensure that such unoccupied building or structure is securely closed so as to prohibit and deter entry thereto and to ensure that no health and/or safety hazard, or threat thereof, is precipitated due to a lack of maintenance or due to neglect.
- C. Owners of any and all unoccupied buildings and/or structures which, through neglect, have deteriorated to the point of being classified as an unoccupied hazard, and therefore constitutes a severe health and/or safety hazard, shall, upon direction of the Dalton Borough Council, remove or cause the removal of the building and/or structure.

§ 263-7. Yards, open lots, parking areas.

No person shall permit:

- A. Fences and/or minor structures to be constructed and maintained so as to present a safety or health hazard to persons and/or property;
- B. The development or accumulation of hazards, rodent harborage and/or infestation upon yards, courts, lots;
- C. Objectionable materials to accumulate and to be blown about the surrounding neighborhood;
- D. Wells, cesspools, cisterns, sedimentation ponds, stormwater management

impoundment ponds and/or ponds of a similar nature to remain open without adequate fencing or barricades to prevent access thereto by the general public; or

- E. The accumulation of heavy undergrowth and/or vegetation which would impair the health and/or safety of the neighborhood; nor shall they permit any trees, plants or shrubbery, or any portion thereof, to grow on their property which constitutes a safety hazard to pedestrian and/or vehicular traffic.

§ 263-8. Infestation, prevention and correction.

- A. Grounds, buildings and structures shall be maintained free of insect, vermin and rodent harborage and infestation.
- B. Adequate sanitary facilities and methods shall be used for the collection, storage, handling and disposal of garbage and refuse.
- C. Where there exists rodent and vermin infestation, corrective measures shall be undertaken by the property owner and/or occupant to alleviate the existing problem(s), to include screening, extermination and/or garbage and refuse control. Methods employed for extermination shall conform with generally accepted practices.

§ 263-9. Miscellaneous provisions.

No person shall permit:

- A. Roof, surface and/or sanitary drainage to create a safety and/or health hazard to persons and/or property by reason of inadequate and/or improper construction or maintenance or manner of discharge;
- B. Roof gutters, drains or any other system designed and constructed to transport stormwater to be discharged into any sanitary sewage system and/or any part thereof; or
- C. Any refrigerator, freezer and/or other similar storage chest to be discarded, abandoned or stored in any place or location which is accessible to the general public without first completely removing any and all locking devices and/or doors.

§ 263-10. Responsibilities of occupants.

Any occupant of a premises shall be responsible for compliance with the provisions of this chapter with respect to the maintenance of that part of the premises which he occupies and/or controls in a safe, sound and/or sanitary condition pursuant to the terms of the contract/agreement under which he exercises occupancy and/or control thereof.

§ 263-11. Responsibilities of owners.

- A. Owners of premises shall comply with the provisions of this chapter as well as operators and occupants, regardless of any agreements between owners and operators or occupants as to which party shall assume such responsibility.
- B. In instances where an occupant is responsible or shares responsibility with an owner for the existence of one or more violations of this chapter, said occupant shall be

deemed responsible and treated as if an owner within the true intent and meaning of this chapter.

§ 263-12. Inspection.

The Dalton Borough Council may enter or may cause, through an authorized representative of the Borough, entry onto premises for the purpose of inspection of any and all premises, properties, buildings and/or structures located within the Borough of Dalton for ascertaining the existence of violations. In those matters where the nature of an alleged violation is such that an inspection of the interior of a building or structure is necessitated, prior arrangements must be made with the owner or his agent to secure access thereto.

§ 263-13. Notice to comply.

- A. If noncompliance with the provisions of this chapter constitutes a nuisance, or if any condition, structure or improvement poses a threat to the health, safety or welfare of the public, the Dalton Borough Zoning Officer shall issue a written notice to be served by registered or certified mail upon the owner of said premises or, if the owner's whereabouts or identity be unknown, by posting the notice conspicuously upon the offending premises.
- B. Said notice shall specify the condition or the structure or improvement complained of and shall require the owner to commence to remove or otherwise rectify the condition or structure or improvement as set forth therein within 10 days of mailing or posting of said notice and, thereafter, to fully comply with the requirements of the notice within a reasonable time.

§ 263-14. Authority to remedy noncompliance.

If the owner does not comply with the notice to abate the conditions within the time limit prescribed, the Dalton Borough shall have the authority to take measures to correct the conditions and collect the cost of such corrections plus 10% of all costs. Dalton Borough, in such event and pursuant to its statutory or otherwise authorized police powers, shall have the right and power to enter upon the offending premises to accomplish the foregoing.

§ 263-15. Hearing.

- A. Any person aggrieved by the decision of the Dalton Borough Zoning Officer may request and shall then be granted a hearing before the Dalton Borough Council, provided he files with the Dalton Borough Council within 10 days after notice of the Dalton Borough Zoning Officer's decision a written petition requesting such hearing and setting forth a brief statement of the grounds therefor. The hearing shall commence not later than 30 days after the date on which the petition was filed unless postponed for sufficient cause.
- B. After such hearing, the Dalton Borough Council shall sustain, modify or overrule the action of the Dalton Borough Zoning Officer.

§ 263-16. Violations and penalties.⁴⁰

Any person who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this chapter and each day the same is continued shall be deemed a separate offense.

§ 263-17. Owners severally responsible.

If the premises are owned by more than one owner, each owner shall severally be subject to prosecution for the violation of this chapter.

§ 263-18. Remedies not mutually exclusive.

The remedies provided herein for the enforcement of this chapter or any remedy provided by law shall not be deemed mutually exclusive; rather, they may be employed simultaneously or consecutively, at the option of the Dalton Borough Council.

40. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 271

RENTAL PROPERTY

ARTICLE I
Rental Occupancy Reports
[Adopted 8-16-2005 by Ord. No. 4-2005]

§ 271-1. Purposes.

This article is enacted to provide for the uniform and equitable distribution of the tax levies in the Borough of Dalton and upon the inhabitants thereof and to promote the health, safety, morals and general welfare of the inhabitants of the Borough of Dalton.

§ 271-2. Definitions and interpretations.

As used in this article, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

BUSINESS UNIT — A parcel of real estate, with or without improvements located thereon, utilized by any person or persons for any commercial activity or purpose.

DWELLING UNIT — One or more rooms used for living and sleeping purposes arranged for occupancy by one family or by one or more persons.

LANDLORD — A lessor or person who acts as agent for the lessor of any parcel of real estate located in the Borough of Dalton, or a lessor or person who acts as agent for the lessor of any improvements on real estate or any building located in the Borough of Dalton.

PERSON — Any individual, partnership, association, firm or corporation.

TENANT — A person who has the use, either by himself or with others, of a dwelling unit or a business unit owned by a person other than himself for a period exceeding 30 days.

§ 271-3. Reports by landlords.

Within 30 days from the effective date of this article, each landlord shall submit to the Dalton Borough Secretary a report form supplied by the Dalton Borough Secretary, which includes the following information:

- A. A list of the dwelling units and business units owned by the landlord and located within the Dalton Borough limits, whether occupied or not occupied;
- B. The address of each dwelling unit and business unit;
- C. A brief description of each dwelling unit or business unit;
- D. Whether or not said dwelling unit or business unit is inhabited or utilized by tenants;
- E. The names of the tenant or tenants utilizing the aforementioned dwelling unit or business unit, if any.

§ 271-4. Reports by persons upon becoming landlords.

After the effective date of this article, any person who becomes a landlord of any parcel of real estate or any improvement on the real estate or building located in the Borough

of Dalton by agreement of sale, by deed or by any other means shall, within 30 days thereafter, report to the Dalton Borough Secretary the information and data set forth in § 271-3 above and on forms to be provided by the Dalton Borough Secretary.

§ 271-5. Reports of changes in use or occupancy.

After the effective date of this article, each and every landlord of property within the Borough of Dalton shall report to the Dalton Borough Secretary on a report form to be supplied by the Dalton Borough Secretary any change in the use or occupancy of any dwelling unit or business unit owned by such landlord. The reported change shall include the name or names of new tenants of such dwelling unit or business unit, the date when such change was effected, and the forwarding address of the old tenant or tenants, if known. A landlord of a hotel, inn or boardinghouse shall not be required to report a person as a "tenant" until that person has resided in such landlord's establishment for a period exceeding 30 days. In the event a dwelling unit or business unit was used or utilized by a tenant and then becomes vacant, this change shall also be reported to the Dalton Borough Secretary. All reports required by this section shall be made within 10 days after a landlord has knowledge that such a unit has had a change in occupancy or has become vacant.

§ 271-6. Duties of Borough Secretary.

The Dalton Borough Secretary, under the authority of this article, shall:

- A. Maintain on file at the Dalton Borough office the names of the landlords owning dwelling units and business units in Dalton Borough, said list to include the names of the current tenants of said dwelling units and business units;
- B. Maintain a supply of forms for landlords to use in making reports to the Dalton Borough Secretary as required by §§ 271-3, 271-4 and 271-5 of this article;
- C. Notify the Chief of Police and the Fire Chief of the Borough of Dalton of the address and description of any dwelling unit or business unit that is vacant, unoccupied and not in use.

§ 271-7. Violations and penalties.⁴¹

Any person who violates or permits a violation of this article shall, upon being found liable therefor, pay a fine of not more than \$600, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings.

§ 271-8. Authority.

This article is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

41. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 282

SEWERS AND SEWAGE DISPOSAL

ARTICLE I
Individual Sewage Disposal Systems
[Adopted 10-14-1982 by Ord. No. 4-1982]

§ 282-1. Purpose.

This article shall have as its purpose the establishing of procedures for the issuing of applications and permits for the enforcement of the Pennsylvania Sewage Facilities Act of 1966, P.L. 1535, No. 537, as subsequently amended, and shall provide that all persons installing an individual or community sewage disposal system within the purview of the Pennsylvania Sewage Facilities Act, as amended, shall first obtain a permit which certifies that the site, plan and specifications of such system are in compliance with the said Pennsylvania Sewage Facilities Act, as amended, and all other rules and regulations adopted pursuant to the Act, and that the said proposed system shall conform with the provisions of this article and all other applicable ordinances and regulations.

§ 282-2. Construal of provisions.

Pursuant to Section 8 of Act 208 of 1974,⁴² subtitled "Powers and duties of local agencies," Dalton Borough hereby designates the members of Dalton Borough Council and their successors as the local agency for the purpose of enforcement and supervision of the Pennsylvania Sewage Facilities Act, as amended. The members of Dalton Borough Council acting as the said local agency are hereby empowered to carry out all the functions, powers and duties granted to local agencies as set forth in Section 8 of Act No. 208 of 1974. The contents of Section 8 of Act No. 208 of 1974 are hereby incorporated by reference.

§ 282-3. Necessity for permits and procedure for application for permits.

- A. No person shall construct, install or request bid proposals for construction or alter an individual sewage system or community sewage system or construct or request bid proposals for construction or install or occupy any building or structure for which an individual sewage system or community sewage system is to be installed without first obtaining a permit indicating that the site and the plans and specifications for such system are in accordance with the provisions of the Pennsylvania Sewage Facilities Act, as amended, and the standards adopted pursuant to the Act.
- B. The procedure for the application for permit shall be as follows:
- (1) The application shall be submitted in writing to the Sewage Enforcement Officer acting for the Dalton Borough Council, and said application shall be in such form and shall include such data as the Department of Environmental Protection may prescribe by regulation.
 - (2) At the time of application for such permit, the required fees imposed by Dalton Borough Council pursuant to its authority under the Pennsylvania Sewage Facilities Act shall be paid to the Borough of Dalton. The Borough of Dalton shall have the authority to set and collect application fees, and a fee schedule

42. Editor's Note: See now 35 P.S. § 750.8.

shall be established and may establish different charges for various types of individual sewage systems and community sewage systems consistent with the administrative costs of reviewing the application and supervising the installation of said system. Dalton Borough Council may by resolution amend the said fee schedule from time to time to account for any increases or adjustments in administrative costs necessary for reviewing applications and supervising the installation of systems.

- (3) All costs incident to the preparation of any test holes for the purpose of percolation tests shall be at the expense of the applicant.
- (4) A permit shall be issued or denied within seven days after receiving an application for permit except that, in case the Sewage Enforcement Officer in accordance with the provisions of Section 8 of Act No. 208 finds the data submitted by an applicant is incomplete or the Sewage Enforcement Officer is unable to verify the information submitted, the Sewage Enforcement Officer shall so notify the applicant within seven days of receiving said application, and the time for acting thereon shall be extended 15 days beyond the date of receipt of adequate supplementary amendatory data. Denial of a permit shall be supported by a statement in writing of the reasons for such action.
- (5) All applicants whose systems, according to the provisions of Act No. 208 of 1974, require that the design and construction be supervised by a professional engineer shall pay all costs directly to the engineer commissioned by the applicant for such purpose.
- (6) The local application process shall conform in all respects with Section 7 of Act No. 208 of 1974, the provisions of which are incorporated herein by reference.⁴³

§ 282-4. Installation; maintenance.

All installation of subsurface sewage disposal systems must comply with the provisions of this article concerning applications for permits. There are no exceptions for any installation of subsurface sewage disposal systems.

§ 282-5. Hearing and appeals.

- A. Any person aggrieved by an action of a Sewage Enforcement Officer in granting or denying a permit under this Act shall have the right, within 30 days after receipt of notice of the action, to request a hearing before the members of Dalton Borough Council. Revocation of permits shall occur only after notice and opportunity for hearing has been given to the permittee. Hearings under this subsection and any subsequent appeal shall be conducted pursuant to the Act of December 2, 1968, P.L. 1133, No. 353, known as the Local Agency Law.⁴⁴
- B. Any person aggrieved by the action of the members of Dalton Borough Council in ruling upon the appeal from the Sewage Enforcement Officer in the granting or

43. Editor's Note: See now 35 P.S. § 750.7.

44. Editor's Note: See now 2 Pa.C.S.A. §§ 551 et seq. and 751 et seq.

denying of a permit shall have the right to appeal to the Court of Common Pleas of Lackawanna County, Pennsylvania, as set forth in the Local Agency Law.

§ 282-6. Violations and penalties.⁴⁵

Any person who shall violate any provisions of Section 7 of the Act No. 208 of 1974 or any of the provisions of this article or any of the rules, regulations or standards promulgated under Section 7 of Act No. 208 of 1974, or who resists or interferes with any officer, agent or employee of Dalton Borough in the performance of his duties, shall be guilty of a summary offense. Upon conviction thereof in a summary proceeding, each such person shall be sentenced to pay a fine of not more than \$1,000 and costs, to be paid to the said County, or in default thereof shall be confined in the County Jail for a period of not more than 30 days.

§ 282-7. Existing rights and remedies preserved.

Nothing in this article shall be construed as preventing the commonwealth or any district attorney or solicitor from proceeding in the court of law or equity to abate nuisances forbidden under the Act known as the Pennsylvania Sewage Facilities Act, as amended, or any other existing law. The penalties provided for in § 282-6 above are intended to be additional and cumulative remedies for the purpose of abating public health hazards and pollution of the waters of this commonwealth, and nothing in this article shall in any way abridge or alter rights of actions or remedies now or hereafter existing in equity or under the common law or statutory law, criminal or civil.

45. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE II
Sewer Connections
[Adopted 6-3-1986 by Ord. No. 3-1986]

§ 282-8. Definitions.

- A. Unless the context specifically and clearly indicates otherwise, the meanings of terms and phrases used in this article shall be as follows:

AUTHORITY — Dalton Sewer Authority, a Pennsylvania municipal authority.

BOROUGH — The Borough of Dalton, Lackawanna County, Pennsylvania, a municipality of the Commonwealth of Pennsylvania, acting by and through its Council or, in appropriate cases, acting by and through its authorized representatives.

BUILDING SEWER — The extension from the sewage drainage system of any structure to the lateral of a sewer.

IMPROVED PROPERTY — Any property located within this Borough upon which there is erected a structure intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sanitary sewage and/or industrial wastes shall be or may be discharged.

INDUSTRIAL WASTES — Any solid, liquid or gaseous substance or waterborne wastes or form of energy rejected or escaping in the course of any industrial, manufacturing, trade or business process or in the course of the development, recovery or processing of natural resources, as distinct from sanitary sewage.

LATERAL — That part of the sewer system extending from a sewer to the curblin or, if there shall be no curblin, to the property line or, if no such lateral shall be provided, then "lateral" means that portion of, or place in, a sewer which is provided for connection of any building sewer.

OWNER — Any person vested with ownership, legal or equitable, sole or partial, of any improved property.

PERSON — Any individual, partnership, company, association, society, corporation or other group or entity.

SANITARY SEWAGE — Normal water-carried household and toilet wastes from any improved property.

SEWER — Any pipe, main or conduit constituting a part of the sewer system used or usable for sewage collection purposes.

SEWER SYSTEM — All facilities, as of any particular time, for collecting, transporting, pumping, treating and/or disposing of sanitary sewage and industrial wastes, situate in or adjacent to this Borough and owned, maintained and operated by the Authority.

§ 282-9. Use of public sewers required.

- A. The owner of any improved property benefited, improved or accommodated by a sewer shall connect such improved property with such sewer in such manner as this

Borough may require within 45 days after notice to such owner from this Borough to make such connection for the purpose of discharge of all sanitary sewage and industrial wastes from such improved property, subject to such limitations and restrictions as shall be established herein or as otherwise shall be established by this Borough or the Authority from time to time.

- B. All sanitary sewage and industrial wastes from any improved property, after connection of such improved property with a sewer shall be required under Subsection A, shall be conducted into a sewer, subject to such limitations and restrictions as shall be established herein or as otherwise shall be established by this Borough or the Authority from time to time.
- C. Prohibited acts.
 - (1) No person shall place or deposit or permit to be placed or deposited upon public or private property within this Borough any sanitary sewage or industrial wastes in violation of Subsection A.
 - (2) No person shall discharge or permit to be discharged to any natural outlet within this Borough any sanitary sewage or industrial wastes in violation of Subsection A, except where suitable treatment has been provided which is satisfactory to this Borough and the Authority.
- D. Simultaneous use of private receptacles prohibited.
 - (1) No privy, vault, cesspool, sinkhole, septic tank or similar receptacle shall be used or maintained at any time upon any improved property which has been connected to a sewer or which shall be required under Subsection A to be connected to a sewer.
 - (2) Every such privy, vault, cesspool, sinkhole, septic tank or similar receptacle in existence shall be abandoned and, at the discretion of this Borough, shall be cleansed and filled at the expense of the owner of such improved property and under the direction and supervision of this Borough; and any such privy, vault, cesspool, sinkhole, septic tank or similar receptacle not so abandoned and, if required by this Borough, cleansed and filled shall constitute a nuisance, and such nuisance may be abated as provided by law at the expense of the owner of such improved property.
- E. No privy, vault, cesspool, sinkhole, septic tank or similar receptacle at any time shall be connected with a sewer.
- F. The notice by this Borough to make a connection to a sewer, referred to in Subsection A, shall consist of a copy of this article, including any amendments and/or supplements at the time in effect, or a summary of each section hereof and a written or printed document requiring the connection in accordance with the provisions of this article and specifying that such connection shall be made within 45 days from the date such notice is given. Such notice may be given at any time after a sewer is in place which can receive and convey sanitary sewage and industrial wastes for treatment and disposal from the particular improved property. Such notice shall be served upon the owner either by personal service or by registered mail or by such other method as at the time may be provided by law.

§ 282-10. Building sewers and connections.

- A. Except as otherwise provided in this Subsection A, each improved property shall be connected separately and independently with a sewer through a building sewer. Grouping of more than one improved property on one building sewer shall not be permitted except under special circumstances and for good sanitary reasons or other good cause shown and then only after special permission of this Borough and the Authority, in writing, shall have been secured and subject to such rules, regulations and conditions as may be prescribed by this Borough or the Authority.
- B. All costs and expenses of construction of a building sewer and all costs and expenses of connection of a building sewer to a sewer, including testing, shall be borne by the owner of the improved property to be connected; and such owner shall indemnify and save harmless this Borough and the Authority from all loss or damage that may be occasioned, directly or indirectly, as a result of construction of a building sewer or of connection of a building sewer to a sewer.
- C. A building sewer shall be connected to a sewer at the place designated by the Authority and where the lateral is provided. The invert of a building sewer at the point of connection shall be the same or a higher elevation than the invert of the sewer. A smooth, neat joint shall be made and the connection of a building sewer to the lateral shall be made secure and watertight.
- D. If the owner of any improved property benefited, improved or accommodated by a sewer, after 45 days' notice from this Borough requiring the connection of such improved property with a sewer, in accordance with § 282-9A, shall fail to connect such improved property, as required, this Borough may make such connection and may collect from such owner the costs and expenses thereof by a municipal claim, an action in assumpsit or such other legal proceeding as may be permitted by law.

§ 282-11. Rules and regulations governing building sewers and connections to sewers.

- A. Where an improved property, at the time connection to a sewer is required, shall be served by its own sewage disposal system or device, the existing house sewer line shall be broken on the structure side of such sewage disposal system or device and attachment shall be made, with proper fittings, to continue such house sewer line as a building sewer.
- B. No building sewer shall be covered until it has been inspected and approved by the Authority. If any part of a building sewer is covered before so being inspected and approved, it shall be uncovered for inspection at the cost and expense of the owner of the improved property to be connected to a sewer.
- C. Every building sewer of any improved property shall be maintained in a sanitary and safe operating condition by the owner of such improved property.
- D. Every excavation for a building sewer shall be guarded adequately with barricades and lights to protect all persons from damage and injury. Streets, sidewalks and all other public property disturbed in the course of installation of a building sewer shall be restored at the cost and expense of the owner of the improved property being connected in a manner satisfactory to this Borough and the Authority.

- E. If any person shall fail or refuse, upon receipt of a notice from this Borough or the Authority, in writing, to remedy any unsatisfactory conditions with respect to a building sewer within 45 days of receipt of such notice, this Borough or the Authority may refuse to permit such person to discharge sanitary sewage and industrial wastes into the sewer system until such unsatisfactory conditions shall have been remedied to the satisfaction of this Borough and the Authority.
- F. This Borough reserves the right to adopt, from time to time, additional rules and regulations as it shall deem necessary and proper relating to connections with a sewer and the sewer system, which additional rules and regulations, to the extent appropriate, shall be and shall be construed as a part of this article.

§ 282-12. Prohibited wastes.

- A. No person shall discharge or permit to be discharged into the sewer system any stormwater, roof or surface drainage; nor shall any person discharge or permit to be discharged into the sewer system any industrial waste, chemicals or other matter:
 - (1) Having a temperature higher than 120° F.;
 - (2) Containing more than 100 parts per million (ppm) by weight of fat, oil or grease;
 - (3) Containing any gasoline, benzene, naptha, fuel oil or other inflammable or explosive liquid, solid or gas;
 - (4) Containing any unground garbage;
 - (5) Containing any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction or other interference with the proper operation of the treatment plant;
 - (6) Having a pH lower than 6.0 or higher than 9.0 or having any other corrosive property capable of causing damage or hazard to the structures, equipment or personnel of the treatment plant or other portion of the sewer system;
 - (7) Containing a toxic or poisonous substance (including wastes containing cyanide, copper and/or chromium ions) in sufficient quantity to injure or interfere with any sewage treatment process constituting a hazard to humans or animals or to create any hazard in the receiving waters of the treatment plant;
 - (8) Containing total solids of such character and in such quantity that unusual attention or expense is required to handle such materials at the treatment plant;
 - (9) Containing noxious or malodorous gas or substance capable of creating a public nuisance, unless otherwise permitted, authorized or approved by the Authority and the Commonwealth of Pennsylvania or by any duly constituted board, commission or department of the Commonwealth of Pennsylvania; or
 - (10) Otherwise prohibited by the Authority or the Borough by subsequently adopted or enacted resolution or ordinance, as applicable.

- B. The prohibition against discharge or permitting to be discharged into the Dalton sewer system any stormwater, roof or surface drainage water is clarified to specify that the discharge of stormwater, roof or surface drainage water into the Dalton sewer system via sump pump, piping or any other artificial method is strictly prohibited, and offenders will be liable in accordance with § 282-13A, as amended. **[Added 11-9-2017 by Ord. No. 3-2017]**

§ 282-13. Violations and penalties.

- A. Any person who shall violate this article shall be liable, upon summary conviction for a first offense and upon summary conviction for each subsequent offense, to a fine of not less than \$200 together with the costs of prosecution in each case. Each day that a violation shall continue shall be deemed and shall be taken to be a separate offense and shall be assessed a fine as set forth herein. Additionally, any person who shall violate this article shall also be assessed costs of investigation, legal fees and additional sewer assessments and penalties. **[Amended 11-9-2017 by Ord. No. 3-2017]**
- B. Fines and costs imposed under provisions of this article shall be enforceable and recoverable in the manner at the time provided by applicable law.

§ 282-14. Declaration of purpose.

It is declared that the enactment of this article is necessary for the protection, benefit and preservation of the health, safety and welfare of the inhabitants of this Borough.

Chapter 286

SOIL EROSION AND SEDIMENT CONTROL

GENERAL REFERENCES

Floodplain management — See Ch. 197.

Subdivision and land development — See Ch. 300.

Stormwater management — See Ch. 292.

Zoning — See Ch. 400.

ARTICLE I
Title, Findings and Purpose

§ 286-1. Title.

This chapter shall be known and may be cited as the "Dalton Borough Soil Erosion and Sediment Control Ordinance," hereinafter referred to as this "chapter."

§ 286-2. Findings.

The Borough Council of Dalton hereby finds that sedimentation is a source of pollution and that the uncontrolled and unregulated disturbance of land has resulted and will continue to result in serious erosion conditions and sedimentation detrimental to the public safety, health and welfare of the citizens of the Borough of Dalton, hereinafter referred to as the "Borough."

§ 286-3. Purpose.

The purpose of this chapter is to provide minimum standards to safeguard persons and property, to protect and promote the public welfare, by preventing excess erosion, hazardous rock and soil slippage, sediment production, and other soil and water management problems, and by regulating and controlling the design, construction, quality of material, use, location and maintenance of grading, excavation and fill.

§ 286-4. Scope.

The provisions of this chapter impose requirements on all excavations or vegetation stripping activities which create accelerated erosion or a danger of accelerated erosion and which require planning and implementation of effective soil conservation measures.

ARTICLE II Definitions

§ 286-5. Rules applying to text.

For the purpose of this chapter, certain rules of word usage apply to the text as follows.

- A. Words used in the present tense include the future tense, and the singular includes the plural, unless the context clearly indicates the contrary.
- B. The term "shall" is always mandatory and not discretionary, the word "may" is permissive.
- C. Any word or term not interpreted or defined by this chapter is used with a meaning of common or standard utilization.

§ 286-6. Definitions.

The following definitions shall apply to the interpretation and enforcement of this chapter unless otherwise specifically stated:

APPLICANT — A person, partnership, corporation, public agency or other entity requesting permission to engage in land disturbance activity.

CONSERVATION DISTRICT — The Lackawanna County Soil Conservation District as established in accordance with the provisions of § 5 of the Conservation District Law, Act of May 15, 1945, P.L. 217, as amended December 19, 1984, Act No. 221.

CRITICAL AREA — A sediment-producing or potential sediment-producing, highly erodible, or severely eroded area.

DISTURB — To dig, dredge, excavate, remove, strip and grub, deposit, grade, clear, level, fill or otherwise alter or change the location or contour of land or otherwise cause land to be exposed to the dangers of erosion.

EROSION — Detachment and movement of soil or rock fragments by water, wind, ice, gravity or other natural forces.

EROSION AND SEDIMENT CONTROL PLAN — A plan which fully indicates necessary land treatment measures, including a schedule of the timing for their installation, which will effectively minimize soil erosion and sedimentation.

EXCAVATION or CUT — Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

FARM CONSERVATION PLAN — A plan which provides for use of land actively utilized for agricultural or conservation purposes, within its capabilities and treatment, to prevent erosion or deterioration of soil and water resources.

LAND — Any ground, soil or earth, including marshes, swamps, drainageways and areas not permanently covered by water within the Borough.

LAND DISTURBANCE — Any activity involving the clearing, excavation, removal, depositing, leveling, grading, grubbing and stripping, dredging, landscaping or filling of soil or rock fragments and any other activity which causes land to be exposed to the danger of erosion, sedimentation or any activity which causes or in any way results in

the pollution of any natural or artificial stream, pond, lake or other body of water by soil or sediment.

LOCAL GOVERNING BODY — The Dalton Borough Council.

MAN-MADE STRUCTURE — Any improvement to land not created or caused by natural forces, including but not limited to buildings of any type, parking lots, driveways and sidewalks, fences, storm culverts, telephone or utility poles, roads and paths of any type.

MULCHING — The application of plant residue or other suitable organic materials to the land surface to conserve moisture, hold soil in place, and aid in establishing plant cover.

MUNICIPALITY or BOROUGH — The Borough of Dalton, Lackawanna County, Pennsylvania.

PERSON — Any individual, corporation, association, partnership, joint venture or organization, as well as any federal, state, county or municipal government or body, authority or board, and any department, agency or subdivision thereof, or any combination of the above.

SEDIMENT — Solid material, both mineral and organic, that is in suspension and/or is being transported or has been moved from its site of origin by air, water, ice or gravity as a product of erosion.

SEDIMENT BASIN — An area formed by a natural or artificial barrier, dam or dike, built at suitable locations to retain sediment.

SITE — Any plot, parcel or parcels of land.

SOIL — All unconsolidated mineral and organic material, such as earth, sand, clay, loam, gravel, humus, sludge, rock or dirt of any origin.

STRIPPING — Any activity which disturbs vegetated or otherwise stabilized soil surfaces, including clearing and grubbing operations and landscaping.

ARTICLE III Requirements and Approvals

§ 286-7. Regulations of state.

All land disturbances, including agriculture, require the preparation of an erosion and sedimentation control plan for the Pennsylvania Department of Protection according to Chapter 102 of its Rules and Regulations⁴⁶ under the Pennsylvania Clean Streams Law.⁴⁷ Said plan can be used to satisfy the plan requirements of this chapter. For certain land disturbance activities, as mentioned in 25 Pa. Code § 102.31 or other applicable sections of Chapter 102 of the Rules and Regulations under the Pennsylvania Clean Streams Law, a person must obtain a permit from the Pennsylvania Department of Environmental Protection.

§ 286-8. Permit required for land disturbance.

No person shall engage in land disturbance activities within the Borough without having first obtained a permit from the Zoning Officer in accordance with the procedures established herein, unless the activity involved is specifically exempted under Article IV of this chapter.

§ 286-9. Notification.

The Borough and the Conservation District shall be notified not less than 72 hours in advance of any land disturbance governed by this chapter. Not included in the 72 hours are holidays and weekends. Time shall only be Monday through Friday.

§ 286-10. Review and approval of erosion and sediment control plan.

- A. No application for a site plan, subdivision, special exception or variance submitted to the Borough or one of its agencies, such as the Planning Commission or the Zoning Hearing Board, shall be granted approval unless it includes an erosion and sediment control plan. Prior to acting upon any site plan or subdivision application the Planning Commission shall refer the erosion and sediment control plan submitted by the applicant to the Conservation District for its review and recommendation.
- B. No building or demolition permit shall be issued for any site unless a permit shall have been obtained in accordance with the requirements of this chapter.
- C. No certificate of occupancy/use permit shall be issued for the site unless the final completed improvements to the site have been installed in accordance with the approved erosion and sediment control plan.
- D. The Borough Planning Commission may approve or disapprove and require modifications to the soil erosion and sediment control plan application based on the recommendations of the Conservation District. If an application is not approved by the Planning Commission, a written explanation shall be provided. If so desired, the

⁴⁶. Editor's Note: See Title 25, Chapter 102 of the Pennsylvania Code.

⁴⁷. Editor's Note: See 35 P.S. § 691.1 et seq.

applicant may revise and resubmit the application, thereby initiating a new review process.

- E. For those land disturbance activities which will require municipal permits under any subdivision and land development ordinances in existence within the municipality, the period for review and notification shall be the same as that specified in said ordinances. For all other applications, the review shall be conducted and notification of results provided within 45 days of receipt of a completed application.
- F. In issuing any permit, the municipality may attach such conditions as determined necessary within reason to prevent danger to property, either public or private, or to any sewer, storm drain or watercourse, or to prevent the operation from being conducted in a manner hazardous to life or property or in a manner likely to create a nuisance. Such conditions may include, but are not limited to, providing necessary easements, specification of work methods, or installation of specific runoff and erosion control measures. No person shall violate any conditions so imposed.

§ 286-11. Prompt determination.

The Conservation District shall review and file a report with the municipality within a period of 30 days of submission of a complete application unless, by mutual agreement in writing between the Conservation District and the applicant, the period of 30 days shall be extended for an additional period of 30 days. The Conservation District shall notify the Borough of any such extension, and the Conservation District shall notify the Borough of the status of the application not less than 10 days prior to the termination of the review period. Failure of the Conservation District to perform such actions within such period or such extension thereof shall constitute recommendation for approval. For purposes of this section, a revision of the plan by the applicant shall constitute a recommendation for approval.

ARTICLE IV
Exemptions

§ 286-12. Other exempt activities and conditions.

The following activities are exempt from the requirements of this chapter:

- A. Gardening or disturbances incidental to the raising of vegetables or produce solely for consumption by the owner of the site.
- B. Plowing, disking and other related land disturbances incidental to the raising of vegetables or produce for sale, provided the owner may be required to submit a farm conservation plan for review by the Conservation District hereunder in the event that the exempt activity is resulting in erosion detrimental to the public safety, health or welfare of the citizens of the Borough, as determined by the municipality.
- C. Mulching, gardening and other disturbances incidental to the raising of flowers, shrubs and other ornamental vegetation when such disturbances are associated with a single-family residential use.
- D. Land disturbance activities associated with the site of a single-family dwelling, which shall not be part of a subdivision, where such site shall not be more than one acre in size. However, such a project shall still provide erosion control within the request made by the Zoning Officer, to include, but not be limited to, silt fencing and/or using straw or hay bales staked to prevent soil erosion and/or sediment from exiting the property. Also any single-family project must provide adequate ground covering to prevent any erosion within the boundary lines of the said property.

ARTICLE V
Administration and Enforcement

§ 286-13. Zoning Officer.

The Zoning Officer shall be the local official responsible for the administration and the enforcement of this chapter.

§ 286-14. Conservation district.

The Conservation District, as defined under Article II of this chapter, is hereby designated as the administrative agency responsible for plan reviews and recommendations to the Planning Commission and the applicant as required under this chapter.

ARTICLE VI
Application Requirements

§ 286-15. Procedure.

Application for a land disturbance permit in the municipality shall include:

- A. Submittal of two copies of a completed application to the municipality accompanied by a fee as specified in Article XI hereof.
- B. Submittal by the applicant of three copies of an erosion and sediment control plan.
- C. Upon review and recommendation of the plan by the Conservation District, a land disturbance permit may be issued by the municipality.
- D. After a permit has been issued, field modifications of a minor nature may be authorized by the Conservation District to ensure adequate resource protection.

§ 286-16. Submission requirements.

The erosion and sediment control plan shall be prepared to meet the requirements of Pennsylvania Code Title 25, Rules and Regulations of the Department of Environmental Protection, Chapter 102, Erosion Control, and shall include the following items to be submitted to the municipality.

- A. Two copies of:
 - (1) A complete subdivision or site plan application at a scale of one inch equals 100 feet, including a key map. Architectural drawings and building plans and specifications are not required.
 - (2) Location of present and proposed drains and culverts, with their discharge capacities and velocities and supporting computations, and identification of conditions below the outlets.
 - (3) Delineations of streams and other significant natural features within the project site.
 - (4) Soils and other natural resource information. The project site delineation map may be drawn on soils maps.
 - (5) Land cover and the land use of the area adjacent to the land disturbance site.
- B. Three copies of the erosion and sediment control plan, at the same scale as the site plan, to include the following information:
 - (1) Proposed sequence of development, including duration of each phase in the sequence.
 - (2) Site grading plan delineating land areas to be disturbed, including proposed cut and fill areas, together with existing and proposed profiles of these.
 - (3) Contours at two-foot intervals, showing present and proposed ground elevations.

- (4) Locations of all streams and existing and proposed drains and culverts.
 - (5) Location and detail of all proposed erosion and sediment control structures, including profiles, cross sections, appropriate notes, and supporting computations.
 - (6) Location and detail of all proposed nonstructural methods of soil stabilization including rates and types of lime, fertilizer, seed and mulch to be applied.
 - (7) Control measures for non-growing-season stabilization of exposed areas, where the final control measure is to be the establishment of vegetation.
 - (8) For residential development: Control measures to apply to dwelling construction on individual lots and notation that such control measures shall apply to subsequent owners if title is conveyed. This notation shall be shown on the final plat.
 - (9) Plans for maintenance of permanent erosion and sediment pollution control facilities during and after construction, indicating who shall have responsibility for such maintenance.
- C. The following notes are to be placed on all erosion and sediment control plans before submission for review:
- (1) All soil erosion and sediment control practices are to be installed prior to any major soil disturbance, or in their proper sequence, and maintained until permanent protection is established.
 - (2) Any disturbed areas that will be left exposed for more than 20 calendar days and not subject to construction traffic will immediately receive a temporary seeding. If the season prevents the establishment of a temporary cover, the disturbed areas will be mulched with straw, or equivalent material, at a rate of not less than 2.5 tons per acre.
 - (3) Permanent vegetation to be seeded or sodded on all exposed areas within seven to 10 calendar days after final grading. Mulch to be used as necessary for protection until seeding is established.
 - (4) All work will be done in accordance with the Chapter 102, Erosion Control Regulations.
 - (5) A subbase course will be applied immediately following rough grading and installation of improvements in order to stabilize streets, roads, driveways and parking areas. In areas where no utilities are present, the subbase shall be installed within 15 calendar days of the preliminary grading.
 - (6) Where applicable, immediately following initial disturbance or rough grading, all critical areas subject to erosion (i.e., steep slopes greater than 3:1 and roadway embankments) will receive a temporary seeding in combination with straw mulch or suitable equivalent at a rate of not less than 2.5 tons per acre.
 - (7) Where applicable, any steep slopes receiving pipeline installation will be backfilled and stabilized daily as the installation proceeds.

- (8) Where applicable, a stabilized construction entrance pad of not less than 1.5 inches clean stone will be placed at all construction driveways immediately after initial site disturbance. (Dimensions: length - not less than 50 feet, except on single-residence lot, where 30 feet, minimum, would apply; width - 10 feet, minimum, but not less than full width of the entrance of exit drives; depth - not less than six inches.)
- (9) Where applicable, conduit outlet protection will be installed at all required outfalls prior to the drainage system becoming operational.
- (10) Any changes to the erosion and sediment control plan will require the submission of revised erosion and sediment control plans to the municipality for review. The revised plans shall meet all current state and local erosion and sediment control requirements.

ARTICLE VII
Inspection and Permit Procedures

§ 286-17. Inspections.

- A. Authority. The Conservation District will make inspections of land disturbance sites pursuant to the responsibilities delegated to it by the municipality and the Commonwealth of Pennsylvania, Department of Environmental Protection, Bureau of Soil and Water Conservation. The Conservation District will notify the municipality of any scheduled inspections at least one full day prior to such inspections.
- B. Final inspection.
- (1) Upon completion of all work authorized under the soil erosion and sediment control permit, the permittee shall notify the municipality and the Conservation District and request a final inspection of the project site.
 - (2) If at the time of the final inspection all erosion and sediment control work has been satisfactorily completed in accordance with the requirements of this chapter, the Conservation District will issue a report of compliance and recommend that the municipality issue a certificate of occupancy/use permit.
 - (3) If at the time of final inspection all erosion and sediment control work has not been satisfactorily completed as determined by the Conservation District, the Conservation District shall document noncompliance and recommend to the municipality that a certificate of occupancy/use be denied until corrective measures are taken.

§ 286-18. Certificate of occupancy/use permit.

- A. No occupancy or use may commence until a certificate of occupancy/use permit has been issued by the municipality. No certificate of occupancy/use permit shall be issued if permanent erosion and sediment controls are not installed according to erosion and sediment control permit conditions.
- B. If a certificate of occupancy/use permit is denied, the owner must take the stipulated corrective measures before the municipality will issue a certificate of occupancy/use permit.

§ 286-19. Revocation or suspension.

Any permit issued under this chapter may be revoked or suspended by the municipality after notice for:

- A. Violation of any condition of the permit;
- B. Violation of any provision of this chapter;
- C. Existence of any condition or the implementation of any act constituting or creating a nuisance, hazard or the endangerment of human life or the property of others;
- D. Falsification of any drawings, data or information pertaining to the issuance of the

permit.

§ 286-20. Notification of noncompliance.

- A. If at any time in the duration of the project work performed by a permittee does not conform to the provisions of this chapter or the conditions of the erosion and sediment control permit, including modifications thereof, a written notice to comply shall be given to the permittee. Such notice shall set forth the nature of the deficiencies and the corrections required along with the time constraints in which the corrective actions shall be taken.
- B. If corrective measures are not completed within 10 working days of receipt of written notification, the permittee shall be considered in violation of this chapter, and the municipality may revoke or suspend the permit and may issue a cease and desist order on all work on the project until corrective actions are taken.
- C. If corrective measures are not completed within the time period specified in the original notification or if the permittee violates the cease and desist order, penalties may be pursued or the financial security, where applicable, may be used to complete the project.

§ 286-21. Failure to obtain certificate of occupancy/use permit.

Any permittee who fails to obtain a certificate of occupancy/use permit at the completion of his project shall be in direct violation of this chapter.

ARTICLE VIII
Additional Applicant Responsibilities

§ 286-22. Protection of adjacent property.

No person shall move or place any soil, bedrock or other material or increase flow of water such that soil is washed over or deposited on adjacent property without the express written consent of the affected property owner. No person shall divert water over the premises of another without the express written consent of the affected property owner.

§ 286-23. Maintenance.

All necessary soil erosion and sediment control measures installed in accordance with the provisions of this chapter and in accordance with the conditions of the erosion and sediment control permit shall be adequately maintained for one year after completion of the approved plan or until such measures are permanently stabilized as determined by the Conservation District. Upon request, the Conservation District will provide the applicant and the municipality with written notification indicating the date on which the measures called for in the approved plan were completed.

§ 286-24. Liability disclaimer.

Neither issuance of a permit nor compliance with the provisions hereto or any condition imposed by the municipality shall relieve any person from any responsibility for damage to persons or property as otherwise imposed by law, nor shall it impose any liability upon the municipality or the Conservation District for damages to persons or property.

§ 286-25. Compatibility.

Permits and approvals issued pursuant to this chapter do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act or ordinance. If more stringent requirements concerning regulation of erosion and sediment control are contained in the other code, rule, act or ordinance, the more stringent regulation shall apply.

§ 286-26. Compliance responsibility.

The property owner is responsible for meeting the conditions for any permit issued, regardless of whether he or his authorized agent signed the application.

ARTICLE IX
Violations and Penalties

§ 286-27. Violations.

Any individual who has disturbed or is in the process of disturbing land as defined under Article II of this chapter, unless specifically exempted under Article IV of this chapter, without a current valid and appropriate erosion and sediment control permit shall be in direct violation of this chapter.

§ 286-28. Penalties.

- A. Any person violating the provisions of this chapter shall be civilly liable for a penalty of \$300 for each and every violation, as deemed appropriate by the court. Each day that the project is in violation after notification shall be a separate violation of the ordinance and subject to an additional penalty of \$300 per day.
- B. In addition thereto, the municipality may institute injunctive, mandamus or any other appropriate action or proceeding at law or in equity for the enforcement of this chapter, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, or mandamus or other appropriate forms of remedy or relief. The municipality shall also be entitled to relief of all legal expenses incurred for the enforcement of this chapter.

§ 286-29. Exclusion from penalties.

If the municipality determines that a violation for a site for which all plans have been fully implemented occurred because of an extraordinary act of nature, the municipality may exclude the permittee from the penalties of this chapter.

ARTICLE X
Appeals and Waivers

§ 286-30. Appeals.

Appeals from any decision under this chapter may be taken to the local governing body in writing within 10 calendar days of the date of the decision. The date of the decision and the date of appeal shall be counted in the 10 calendar days. The appellant shall be entitled to a hearing before the local governing body within 30 days from the date of filing of the appeal. The date of the appeal and the date of the hearing shall be counted in the 30 days. An appeal hereunder shall be taken by submitting a notice of appeal and request for hearing in writing to the Borough Secretary by either certified mail, return receipt requested, or by delivering the notice required hereunder to the office of the Borough Secretary during normal business hours. The date of the filing of the appeals shall be the date of receipt by the Borough Secretary of the notice of appeal required to be filed hereunder.

§ 286-31. Waiver permitted.

The local governing body may, upon the affirmative written recommendation of the Planning Commission or the Conservation District, as applicable, upon good cause shown and without a hearing, waive any or all the requirements of this chapter whenever it determines that the enforcement of the provisions of this chapter would result in a manifest injustice and that the proposed land disturbance will not be detrimental to the health, safety or welfare of the citizens of the municipality.

ARTICLE XI
Fees

§ 286-32. Fee schedule.

The following fee schedules, I.A. and I.B., shall apply to all applications for permits under this chapter; provided, however, that for those submissions requiring DEP permit application Schedule I.C. also applies.

A. Schedule I.A. Residential Subdivision

- (1) One to two units: \$25.
- (2) Three to 10 units: \$175.
- (3) Eleven to 50 units: \$275 plus \$15 per unit over 24 units.
- (4) Fifty-one units and over: \$700 plus \$10 per unit over 64 units.

B. Schedule I.B. Industrial, Commercial, Demolition, Parking Lots, Public Facilities, Clearing and Grading Projects, High-rise Apartments, and others.

- (1) Two hundred and twenty-five dollars (basic fee) + \$5 for every 1/2 acre.

C. Schedule I.C. State Earth Disturbance Permits.

- (1) All projects which require a state earth disturbance permit are required to submit an additional check in the amount of \$200, payable to the "Commonwealth of Pennsylvania."

§ 286-33. Recertification fee.⁴⁸

To review plans that have been previously certified and subsequent revisions are made to such a plan by the applicant, a fee as set pursuant to a resolution of the Dalton Borough Council shall be charged for review and recertification.

§ 286-34. Plan withdrawal policy.

- A. Upon written request by the applicant and approval by the local governing body, a portion of the certification fee may be refunded if the applicant withdraws the plan prior to certification.
- B. No certification fees are refundable following plan certification.

48. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 290

SOLID WASTE

ARTICLE I
Collection and Disposal
[Adopted 12-27-2001 by Ord. No. 6-2001]

§ 290-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ASHES — Coal ashes, coke ashes, wood ashes and other residue resulting from the burning of other fuels used for heating and cooking purposes.

BOROUGH — The Borough of Dalton, County of Lackawanna, Commonwealth of Pennsylvania.

BOROUGH COLLECTOR — That individual, partnership, firm, corporation or business entity designated by the Borough to collect and dispose of Borough municipal refuse.

COMBUSTIBLE RUBBISH — Paper, rags, excelsior, straw, boxes, mattresses, old shoes, leather scrap, rubber scrap, carpets, oilcloth, Christmas trees, pruning from vines, trees, shrubbery, etc., and other flammable waste materials other than those described under the terms "garbage" and "noncombustible rubbish."

COMMERCIAL/NONRESIDENTIAL ENTERPRISES, — A class of premises not used as dwelling units, including but not limited to restaurants, bars/saloons, eating establishments, grocery stores, and offices.

DEAD ANIMALS — All dead animals and parts thereof not intended to be used as food for human beings.

EQUIVALENT DWELLING UNIT — A dwelling unit in a house or row of houses. A dwelling unit being defined as a building thereof with exclusive culinary and/or sanitary facilities designed for occupancy and use by one-person or one-family household.

GARBAGE — Any offal or refuse of fish, fruit, vegetables, animal matter or any other organic substance subject to fermentation or decay, including matters liquid or solid, house and store sweepings, and tin cans which contain animal or vegetable matter.

NONCOMBUSTIBLE RUBBISH — Glass, tinware, wire, crockery, metal, waste materials and other nonflammable refuse.

REFUSE — "Garbage" and "ashes," as herein defined.

SOLID WASTE — Any waste, including but not limited to that from municipal, residential or hazardous units, including solid, liquid, semisolid or contained gaseous materials.

WASTE DISPOSAL AND COLLECTION — The process of collecting refuse and garbage within the Borough of Dalton, including, but not by way of limitation, landfill tipping costs, employees' salaries, employees' benefits and other costs incidental thereto.

§ 290-2. Garbage and refuse to be removed by Borough; regulations and schedule fees adopted.

All garbage, rubbish, dead animals and ashes as herein defined shall be gathered and removed by Dalton Borough, either directly by Borough employees or through such

contractor or contractors as the Borough may designate under the rules and regulations as provided herein, and the costs and expenses of the collection and removal of the garbage, rubbish, dead animals and ashes shall be paid by those from whose premises said garbage, rubbish, dead animals and ashes are removed or by the person responsible for the existence of such garbage, rubbish, dead animals or ashes as provided by the schedule of fees hereinafter set forth.

§ 290-3. Administration.

- A. All Borough residential refuse generated within the Borough shall be collected, conveyed and disposed of by the Borough of Dalton, either directly by Borough employees or by such contractor or contractors as the Borough may employ for purposes of collection and removal of refuse. **[Amended 4-10-2003 by Ord. No. 6-2003; 2-28-2006 by Ord. No. 2-2006; 2-12-2009 by Ord. No. 1-2009]**
- B. The collection and disposal of refuse in the Borough shall be under the supervision of Dalton Borough Council, the Public Works Committee. Borough Council shall have the authority to make regulations concerning the days of collection, type and location of waste containers and such other matters pertaining to the collection and disposal as may be deemed advisable and to change and modify the same after notice as required by law.
- C. Ownership of refuse materials set out for collection shall be vested in the Borough.
- D. It shall be unlawful for any person, other than such persons as are duly authorized by the Borough, to collect and haul refuse within or from the Borough so as to avoid payment of the refuse collection charges provided for herein.

§ 290-4. Fees. [Amended 4-10-2003 by Ord. No. 6-2003; 2-28-2006 by Ord. No. 2-2006; 2-12-2009 by Ord. No. 1-2009]

- A. Each property owner will be responsible for the payment of each equivalent dwelling unit (EDU) owned by them. The fee set herein may be paid by the owner, tenant, lessee or occupant of a particular dwelling but shall be the ultimate responsibility of the property owner.
- B. The fee for each EDU will be \$388 for residential refuse/garbage service provided for calendar year 2021. **[Last amended 1-2-2018 by Ord. No. 2-2018; 2-13-2020 by Ord. No. 2-2020; 1-14-2021 by Ord. No. 2-2021]**
- C. All fees affixed by this section shall be payable annually.
- D. The fee will be collected by the Tax Collector of the Borough of Dalton.
- E. All fees shall be considered delinquent if not paid on or before July 1. A delinquent charge of 12% will be added to the unpaid balance.
- F. All fees shall be deposited in a Borough account to be established by Borough Council. This account will be used to reimburse the general Borough operating budget for costs incurred directly for refuse removal.
- G. The Borough and/or its contractor may discontinue all refuse collection service to all delinquent accounts. Upon stoppage of service, service will be resumed only on

payment of all accumulated fees during the delinquent period, as well as all penalties assessed against the account.

- H. Any garbage fees not paid by September 30 will be the subject of a municipal lien to be filed on behalf of Dalton Borough on or after September 30. All fees and costs associated with the recordation, collection regarding the municipal lien and satisfaction of the lien shall be assessed against the property owner responsible for payment of the garbage fee.
- I. The fee charged by Dalton Borough for any returned checks is \$25. **[Amended 3-11-2010 by Ord. No. 1-2010; 2-10-2011 by Ord. No. 2-2011; 1-10-2013 by Ord. No. 2-2013; 2-19-2014 by Ord. No. 2-2014; by Ord. No. 3-2015; 6-9-2016 by Ord. No. 5-2016; 1-12-2017 by Ord. No. 2-2017; 1-2-2018 by Ord. No. 2-2018; 2-13-2020 by Ord. No. 2-2020; 1-14-2021 by Ord. No. 2-2021]**
- J. All costs related to the collection of delinquent accounts, including court costs, sheriff's fees, constable fees, postage and attorneys' fees, will be calculated at the rate of \$250 per hour. **[Added 1-10-2013 by Ord. No. 2-2013; amended 2-19-2014 by Ord. No. 2-2014; by Ord. No. 3-2015; 6-9-2016 by Ord. No. 5-2016; 1-12-2017 by Ord. No. 2-2017; 1-2-2018 by Ord. No. 2-2018; 2-13-2020 by Ord. No. 2-2020; 1-14-2021 by Ord. No. 2-2021]**

§ 290-5. Exonerations.

- A. Any dwelling unit which is totally unoccupied and which generates no refuse for an entire quarter shall be exonerated from the charges as herein provided. Such exoneration shall be granted only after:
 - (1) The owner(s) has filed an affidavit with the Borough certifying to such vacancy;
 - (2) The Borough approves this affidavit.
- B. For purposes of this section, a "quarter" shall be defined as three consecutive months.
- C. An exoneration given for one quarter reduces the yearly fee paid by 25%. The owner of an unoccupied EDU must request and receive exonerations during each three consecutive months in order to pay no waste disposal collection fee in any given year.
- D. The Borough Council shall, from time to time, adopt and promulgate rules and regulations setting forth the terms, conditions and administrative procedures for levying and collecting of the waste disposal collection fee.

§ 290-6. Violations and penalties. [Amended 11-9-2017 by Ord. No. 4-2017]

- A. Any person, whether as principal, agent or employee, violating or assisting in violation of any provision of this article or any regulation made by Borough Council under the provisions hereof shall, upon conviction thereof, before a Magisterial District Judge, pay a fine of not less than \$500 and not more than \$1,000 and, in default of payment of such fine and costs of prosecution, shall be

imprisoned in the County Jail for a period of not more than 30 days.

- B. Giving false information to Borough officials in order to avoid or reduce payment of the within fees shall constitute a separate offense, which, upon conviction thereof before a Magisterial District Judge, shall be punishable by a fine of not less than \$500 and not more than \$1,000 and, in default of payment of such fine and costs of prosecution, shall be imprisoned in the County Jail for a period of not more than 30 days.

§ 290-7. Authorized persons only may transport refuse to disposal site.

No person, firm, association or corporation except Dalton Borough or its designated subcontractor shall be permitted to carry, convey or transport through the streets, alleys or public places of Dalton Borough any solid waste hereafter without being subject to the penalties as herein contained.

§ 290-8. Additional rules and regulations.

The Borough of Dalton is hereby authorized to make and promulgate any additional rules and regulations for the collection, removal and disposal of solid waste not in conflict with this article, and violations of the same shall be subject to the same penalties as provided in this article.

§ 290-9. Prohibited acts. [Amended 4-10-2003 by Ord. No. 6-2003; 2-28-2006 by Ord. No. 2-2006; 2-12-2009 by Ord. No. 1-2009]

No person shall obstruct, delay or interfere with the garbage collectors while in the performance of their duties or enter into any controversies with the collectors, nor shall any person violate any of the provisions of this article with regard to the disposal of garbage, rubbish and ashes, or the containers for the same, or violate any of the provisions with respect to the collection and removal of garbage, rubbish and ashes. Transportation of refuse into the Borough is prohibited.

§ 290-10. Authority.

This article is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

ARTICLE II
Recycling
[Adopted 12-13-2007 by Ord. No. 7-2007]

§ 290-11. Title.

The short title of this article shall be the "Borough of Dalton Recycling Ordinance," and the same may be cited in that manner.

§ 290-12. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ALUMINUM — Products made from aluminum including empty all-aluminum beverage and food containers, window screen frames, siding and lawn chairs.

BIMETALLIC CANS — Empty food and beverage containers consisting of ferrous sides and bottoms and an aluminum top.

COMMERCIAL ESTABLISHMENTS — Those properties used primarily for commercial or industrial purposes.

CORRUGATED CARDBOARD — That material consisting of two or more pieces of kraft liner separated by corrugated (fluted) liner board. Excluded are materials without a corrugated interliner, paperboard, and those materials with a corrugated liner made from rice or other non-wood-based materials.

CURBSIDE COLLECTION — The collection by the municipality or its authorized agent(s) of recyclable materials placed at the curbside or other designated location.

FERROUS CANS — Empty steel or tin food or beverage containers.

GLASS CONTAINERS — Bottles and jars made of clear, green or brown glass. Expressly excluded is noncontainer glass, plate glass, blue glass and porcelain or ceramic products.

HIGH-GRADE OFFICE PAPER — That paper collected from commercial, institutional and municipal establishments that was discarded from xerographic copiers, from nonthermal computer printers, from general-office-use forms, memos and correspondence, and from print shops and other commercial printing processes. Material sorting and classification grades will be specified in the regulations specific to this article. Expressly excluded are papers with self-carbons, carbon paper, envelopes, and all other grades of papers not meeting specifications in the regulations.

INSTITUTIONAL ESTABLISHMENT — Those facilities that house or serve groups of people, e.g., hospitals, schools, nursing homes.

LEAF WASTE — Leaves, garden residues, shrubbery, tree trimmings, and similar material, but not including grass clippings.

MAGAZINES AND PERIODICALS — Printed matter containing miscellaneous written pieces published at fixed or varying intervals. Expressly excluded, however, are all other paper products of any nature whatsoever.

NEWSPAPERS — Paper of the type commonly referred to as newsprint and distributed at mixed intervals, having printed thereon news and opinions, containing advertisements

and other matters of public interest. Expressly excluded, however, are newspapers which have been soiled.

PERSON(S) — Owners, lessees and occupants of residences or commercial or institutional establishments.

PLASTIC CONTAINERS — Empty plastic food and beverage containers. Due to the large variety of types of plastics, the recycling regulations shall stipulate the specific types of plastic which may be recycled.

PRIVATE WASTE COLLECTORS — Persons engaged in the business of collecting and disposing of municipal waste from residences, businesses, institutions and community activities within the Borough of Dalton.

RECYCLABLE MATERIALS — Those materials specified by the Borough of Dalton to be recycled. The list of materials shall be specified in the recycling regulations resulting from this article and may be revised from time to time as deemed necessary by the Borough.

RECYCLING PLAN — The plan, prepared by persons receiving waste services from private waste collectors, that describes the recycling system to be employed to meet the requirements of the Borough's recycling regulations.

RESIDENCE — Any occupied single-family or multifamily dwelling from which a municipal or private waste hauler collects solid waste.

SOLID WASTE — All refuse (garbage and rubbish) and other discarded solid material normally collected by a municipal or private hauler.⁴⁹

YARD WASTE — Prunings, grass clippings, weeds, leaves and garden waste.

§ 290-13. Establishment of program.

There is hereby established by the Borough of Dalton, hereinafter referred to as "the municipality," a program that mandates that recyclable materials shall be kept separate from solid waste by all persons within the municipality. The Borough is hereby authorized to prepare and issue regulations for implementation of the program.

§ 290-14. Preparation of source separation and recycling plan for persons not receiving Borough waste collection services.

There is hereby established the requirement that a source separation and recycling plan be submitted annually by each person not receiving municipal waste collection service provided by the Borough of Dalton. The plan shall be completed on forms provided by the Borough of Dalton. Persons shall seek the assistance of their private waste collector in preparing the recycling plan.

§ 290-15. Separation of recyclables and placement for collection.

Recyclable materials shall be kept separate from waste and placed at the curb in areas designated by the municipality or identified in recycling plans for collection at such times and dates as may be hereinafter established by regulations.

49. Editor's Note: The definition of "waste collection license," which immediately followed this definition, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 290-16. Collection by unauthorized person(s).

It shall be a violation of this article for any person(s) unauthorized by the Borough to collect or pick up or cause to be collected or picked up any such recyclable material. Each such collection in violation hereof shall constitute a separate and distinct offense punishable as hereinafter provided.

§ 290-17. Enforcement and administration.

The Borough is authorized and directed to enforce this article. The same is hereby authorized and directed to establish and promulgate reasonable regulations as to the manner, days and times for the collection of recyclable materials in accordance with the terms hereof and any other matters required to implement this article. The Borough may change, modify, repeal or amend any portion of said rules and regulations at any time.

§ 290-18. Violation and penalties.

- A. Any action by any person, firm, corporation or other entity which violates or does not comply with any provision of this article or any regulation thereof shall be punishable by a fine not to exceed \$600, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings.⁵⁰
- B. The Borough of Dalton reserves the right not to collect municipal waste containing recyclables.

§ 290-19. Contracts or agreements.

The Borough may enter into agreements with public or private agencies or firms to authorize them to collect all or part of the recyclable materials from curbside or elsewhere as designated by the municipality.

§ 290-20. Authority.

This article is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

50. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 292

STORMWATER MANAGEMENT

GENERAL REFERENCES

Floodplain management — See Ch. 197.

Streets and sidewalks — See Ch. 294.

Sewers and sewage disposal — See Ch. 282.

Subdivision and land development — See Ch. 300.

Soil erosion and sediment control — See Ch. 286.

ARTICLE I
General Provisions

§ 292-1. Short title.

This chapter shall be known and may be cited as the "Borough of Dalton MS4 Stormwater Management Ordinance."

§ 292-2. Statement of findings.

The governing body of the municipality finds that:

- A. Inadequate management of accelerated runoff of stormwater resulting from development throughout a watershed increases flows and velocities, contributes to erosion and sedimentation, overtaxes the carrying capacity of streams and storm sewers, greatly increases the cost of public facilities to carry and control stormwater, undermines floodplain management and flood control efforts in downstream communities, reduces groundwater recharge, threatens public health and safety, and increases nonpoint-source pollution of water resources.
- B. A comprehensive program of stormwater management, including reasonable regulation of development and activities causing accelerated runoff, is fundamental to the public health, safety and welfare and the protection of people of the commonwealth, their resources, and the environment.
- C. Stormwater is an important water resource, which provides groundwater recharge for water supplies and base flow of streams, which also protects and maintains surface water quality.
- D. Federal and state regulations require certain municipalities to implement a program of stormwater controls. These municipalities are required to obtain a permit for stormwater discharges from their separate storm sewer systems under the National Pollutant Discharge Elimination System (NPDES).

§ 292-3. Purpose.

The purpose of this chapter is to promote health, safety and welfare within the municipality and its watershed by minimizing the harms and maximizing the benefits described in § 292-2 of this chapter, through provisions designed to:

- A. Meet legal water quality requirements under state law, including regulations at 25 Pa. Code Ch. 93 to protect, maintain, reclaim and restore the existing and designated uses of the waters of this commonwealth.
- B. Preserve the natural drainage systems as much as possible.
- C. Manage stormwater runoff close to the source.
- D. Provide procedures and performance standards for stormwater planning and management.
- E. Maintain groundwater recharge to prevent degradation of surface water and groundwater quality and to otherwise protect water resources.

- F. Prevent scour and erosion of stream banks and streambeds.
- G. Provide proper operation and maintenance of all SWM BMPs that are implemented within the municipality.
- H. Provide standards to meet NPDES permit requirements.

§ 292-4. Statutory authority.

The municipality also is empowered to regulate land use activities that affect runoff by the authority of the Act of July 31, 1968, P.L. 805, No. 247, the Pennsylvania Municipalities Planning Code, as amended.⁵¹

§ 292-5. Applicability.

All regulated activities and all activities that may affect stormwater runoff, including land development and earth disturbance activity, are subject to regulation by this chapter.

§ 292-6. Repealer.

Any other ordinance provision(s) or regulations of the municipality inconsistent with any of the provisions of this chapter is hereby repealed to the extent of the inconsistency only.

§ 292-7. Severability.

In the event that a court of competent jurisdiction declares any section or provision of this chapter invalid, such decision shall not affect the validity of any of the remaining provisions of this chapter.

§ 292-8. Compatibility with other requirements.

Approvals issued and actions taken under this chapter do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other code, law, regulation or ordinance.

§ 292-9. Erroneous permit.

Any permit or authorization issued or approved based on false, misleading or erroneous information provided by an applicant is void without the necessity of any proceedings for revocation. Any work undertaken or use established pursuant to such permit or other authorization is unlawful. No action may be taken by a board, agency or employee of the municipality purporting to validate such a violation.

51. Editor's Note: See 53 P.S. § 10101 et seq.

ARTICLE II

Definitions

§ 292-10. Word usage.

For the purposes of this chapter, certain terms and words used herein shall be interpreted as follows:

- A. Words used in the present tense include the future tense; the singular number includes the plural, and the plural number includes the singular; words of masculine gender include feminine gender, and words of feminine gender include masculine gender.
- B. The word "includes" or "including" shall not limit the term to the specific example but is intended to extend its meaning to all other instances of like kind and character.
- C. The words "shall" and "must" are mandatory; the words "may" and "should" are permissive.

§ 292-11. Terms defined.

As used in this chapter, the following terms shall have the meanings indicated:

AGRICULTURAL ACTIVITY — Activities associated with agriculture, such as agricultural cultivation, agricultural operation, and animal heavy use areas. This includes the work of producing crops, including tillage, land clearing, plowing, disking, harrowing, planting, harvesting crops or pasturing and raising of livestock, and installation of conservation measures. Construction of new buildings or impervious area is not considered an agricultural activity.

APPLICANT — A landowner, developer or other person who has filed an application with the municipality for approval to engage in any regulated activity at a project site in the municipality.

BEST MANAGEMENT PRACTICE (BMP) — Activities, facilities, designs, measures or procedures used to manage stormwater impacts from regulated activities, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of this chapter. Stormwater BMPs are commonly grouped into one of two broad categories or measures: "structural" or "nonstructural." In this chapter, nonstructural BMPs or measures refer to operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff, whereas structural BMPs or measures are those that consist of a physical device or practice that is installed to capture and treat stormwater runoff. Structural BMPs include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low-impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, and manufactured devices. Structural stormwater BMPs are permanent appurtenances to the project site.

CONSERVATION DISTRICT — A conservation district, as defined in Section 3(c) of the Conservation District Law [3 P.S. § 851(c)] that has the authority under a

delegation agreement executed with DEP to administer and enforce all or a portion of the regulations promulgated under 25 Pa. Code Ch. 102.

DEP — The Pennsylvania Department of Environmental Protection.

DESIGN STORM — The magnitude and temporal distribution of precipitation from a storm event measured in probability of occurrence (e.g., a five-year storm) and duration (e.g., 24 hours) used in the design and evaluation of stormwater management systems. Also see "return period."

DETENTION VOLUME — The volume of runoff that is captured and released into the waters of this commonwealth at a controlled rate.

DEVELOPMENT SITE (SITE) — See "project site."

DISTURBED AREA — An unstabilized land area where an earth disturbance activity is occurring or has occurred.

EARTH DISTURBANCE ACTIVITY — A construction or other human activity which disturbs the surface of the land, including but not limited to: clearing and grubbing; grading; excavations; embankments; road maintenance; building construction; and the moving, depositing, stockpiling or storing of soil, rock or earth materials.

EROSION — The natural process by which the surface of the land is worn away by water, wind or chemical action.

EXISTING CONDITION — The dominant land cover during the five-year period immediately preceding a proposed regulated activity.

FEMA — Federal Emergency Management Agency.

FLOODPLAIN — Any land area susceptible to inundation by water from any natural source or delineated by applicable FEMA maps and studies as being a special flood hazard area. Also includes areas that comprise Group 13 soils, as listed in Appendix A of the Pennsylvania DEP Technical Manual for Sewage Enforcement Officers (as amended or replaced from time to time by DEP).

FLOODWAY — The channel of the watercourse and those portions of the adjoining floodplains that are reasonably required to carry and discharge the one-hundred-year flood. Unless otherwise specified, the boundary of the floodway is as indicated on maps and flood insurance studies provided by FEMA. In an area where no FEMA maps or studies have defined the boundary of the one-hundred-year floodway, it is assumed – absent evidence to the contrary – that the floodway extends from the stream to 50 feet from the top of the bank of the stream.

FOREST MANAGEMENT/TIMBER OPERATIONS — Planning and activities necessary for the management of forestland. These include conducting a timber inventory, preparation of forest management plans, silvicultural treatment, cutting budgets, logging road design and construction, timber harvesting, site preparation, and reforestation.

HYDROLOGIC SOIL GROUP (HSG) — Infiltration rates of soils vary widely and are affected by subsurface permeability as well as surface intake rates. Soils are classified into four HSGs (A, B, C and D) according to their minimum infiltration rate, which is obtained for bare soil after prolonged wetting. The NRCS defines the four groups and provides a list of most of the soils in the United States and their group classification. The

soils in the area of the development site may be identified from a soil survey report that can be obtained from local NRCS offices or conservation district offices. Soils become less pervious as the HSG varies from A to D (NRCS).⁵²

IMPERVIOUS SURFACE (IMPERVIOUS AREA) — A surface that prevents the infiltration of water into the ground. Impervious surfaces (or areas) shall include but not be limited to: roofs, additional indoor living spaces, patios, garages, storage sheds and similar structures, and any new streets or sidewalks. Decks, parking areas, and driveway areas are not counted as impervious areas if they do not prevent infiltration.

KARST — A type of topography or landscape characterized by surface depressions, sinkholes, rock pinnacles/uneven bedrock surface, underground drainage and caves. Karst is formed on carbonate rocks, such as limestone or dolomite.

LAND DEVELOPMENT (DEVELOPMENT) — Inclusive of any or all of the following meanings:

- A. The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
 - (1) A group of two or more buildings; or
 - (2) The division or allocation of land or space between or among two or more buildings; or
 - (3) The division or allocation of land or space between or among two or more existing or prospective occupants by means of, or for the purpose of, streets, common areas, leaseholds, condominiums, building groups, or other features.
- B. Any subdivision of land.
- C. Development in accordance with Section 503(1.1) of the Pennsylvania Municipalities Planning Code.

MUNICIPALITY — Borough of Dalton, Lackawanna County, Pennsylvania.

NRCS — United States Department of Agriculture Natural Resources Conservation Service (previously SCS).

PEAK DISCHARGE — The maximum rate of stormwater runoff from a specific storm event.

PERVIOUS AREA — Any area not defined as impervious.

PROJECT SITE — The specific area of land where any regulated activities in the municipality are planned, conducted or maintained.

QUALIFIED PROFESSIONAL — Any person licensed by the Pennsylvania Department of State or otherwise qualified by law to perform the work required by this chapter.

REGULATED ACTIVITIES — Any earth disturbance activities or any activities that involve the alteration or development of land in a manner that may affect stormwater runoff.

52. Editor's Note: See references in § 292-36C and D.

REGULATED EARTH DISTURBANCE ACTIVITY — Activity involving earth disturbance subject to regulation under 25 Pa. Code Ch. 92, 25 Pa. Code Ch. 102, or the Clean Streams Law.⁵³

RETENTION VOLUME/REMOVED RUNOFF — The volume of runoff that is captured and not released directly into the surface waters of this commonwealth during or after a storm event.

RETURN PERIOD — The average interval, in years, within which a storm event of a given magnitude can be expected to occur one time. For example, the twenty-five-year return period rainfall would be expected to occur on average once every 25 years; or stated in another way, the probability of a twenty-five-year storm occurring in any one year is 0.04 (i.e., a four-percent chance).

RUNOFF — Any part of precipitation that flows over the land.

SEDIMENT — Soils or other materials transported by surface water as a product of erosion.

STATE WATER QUALITY REQUIREMENTS — The regulatory requirements to protect, maintain, reclaim and restore water quality under Title 25 of the Pennsylvania Code and the Clean Streams Law.

STORMWATER — Drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.

STORMWATER MANAGEMENT BEST MANAGEMENT PRACTICES — Abbreviated as BMPs or SWM BMPs throughout this chapter.

STORMWATER MANAGEMENT FACILITY — Any structure, natural or man-made, that, due to its condition, design or construction, conveys, stores or otherwise affects stormwater runoff. Typical stormwater management facilities include, but are not limited to, detention and retention basins; open channels; storm sewers; pipes; and infiltration facilities.

STORMWATER MANAGEMENT SITE PLAN — The plan prepared by the developer or his representative indicating how stormwater runoff will be managed at the development site in accordance with this chapter. "Stormwater management site plan" will be designated as "SWM site plan" throughout this chapter.

SUBDIVISION — As defined in the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247.⁵⁴

USDA — United States Department of Agriculture.

WATERS OF THIS COMMONWEALTH — Any and all rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs, and all other bodies or channels of conveyance of surface water and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this commonwealth.

WATERSHED — Region or area drained by a river, watercourse or other surface water of this commonwealth.

53. Editor's Note: See 35 P.S. § 691.1 et seq.

54. Editor's Note: See 53 P.S. § 10101 et seq.

WETLAND — Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.

ARTICLE III
Stormwater Management Standards

§ 292-12. General requirements.

- A. For all regulated activities, unless preparation of an SWM site plan is specifically exempted in § 292-13:
 - (1) Preparation and implementation of an approved SWM site plan is required.
 - (2) No regulated activities shall commence until the municipality issues written approval of an SWM site plan, which demonstrates compliance with the requirements of this chapter.
- B. SWM site plans approved by the municipality, in accordance with § 292-21, shall be on site throughout the duration of the regulated activity.
- C. The municipality may, after consultation with DEP, approve measures for meeting the state water quality requirements other than those in this chapter, provided that they meet the minimum requirements of, and do not conflict with, state law, including, but not limited to, the Clean Streams Law.
- D. For all regulated earth disturbance activities, erosion and sediment control BMPs shall be designed, implemented, operated and maintained during the regulated earth disturbance activities (e.g., during construction) to meet the purposes and requirements of this chapter and to meet all requirements under Title 25 of the Pennsylvania Code and the Clean Streams Law. Various BMPs and their design standards are listed in the Erosion and Sediment Pollution Control Program Manual (E&S Manual), No. 363-2134-008 (April 15, 2000), as amended and updated.⁵⁵
- E. Impervious areas:
 - (1) The measurement of impervious areas shall include all of the impervious areas in the total proposed development even if development is to take place in stages.
 - (2) For development taking place in stages, the entire development plan must be used in determining conformance with this chapter.
 - (3) For projects that add impervious area to a parcel, the total impervious area on the parcel is subject to the requirements of this chapter; except that the volume controls in § 292-14 and the peak rate controls of § 292-15 do not need to be retrofitted to existing impervious areas that are not being altered by the proposed regulated activity.
- F. Stormwater flows onto adjacent property shall not be created, increased, decreased, relocated or otherwise altered without written notification of the adjacent property owner(s) by the developer. Such stormwater flows shall be subject to the requirements of this chapter.
- G. All regulated activities shall include such measures as necessary to:

55. Editor's Note: See reference in § 292-36B.

- (1) Protect health, safety and property.
 - (2) Meet the water quality goals of this chapter by implementing measures to:
 - (a) Minimize disturbance to floodplains, wetlands and wooded areas.
 - (b) Maintain or extend riparian buffers.
 - (c) Avoid erosive flow conditions in natural flow pathways.
 - (d) Minimize thermal impacts to waters of this commonwealth.
 - (e) Disconnect impervious surfaces by directing runoff to pervious areas, wherever possible.
 - (3) To the maximum extent practicable, incorporate the techniques for low-impact development practices described in the Pennsylvania Stormwater Best Management Practices Manual (BMP Manual).⁵⁶
- H. The design of all facilities over karst shall include an evaluation of measures to minimize adverse effects.
- I. Infiltration BMPs should be spread out, made as shallow as practicable, and located to maximize use of natural on-site infiltration features while still meeting the other requirements of this chapter.
- J. Normally dry, open-top, storage facilities should completely drain both the volume control and rate control capacities over a period of time not less than 24 hours and not more than 72 hours from the end of the design storm.
- K. The design storm volumes to be used in the analysis of peak rates of discharge should be obtained from the Precipitation-Frequency Atlas of the United States, Atlas 14, Volume 2, Version 3.0, U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Weather Service, Hydrometeorological Design Studies Center, Silver Spring, Maryland. NOAA's Atlas 14 can be accessed at <http://hdsc.nws.noaa.gov/hdsc/pfds/>.⁵⁷
- L. For all regulated activities, SWM BMPs shall be designed, implemented, operated and maintained to meet the purposes and requirements of this chapter and to meet all requirements under Title 25 of the Pennsylvania Code, the Clean Streams Law, and the Storm Water Management Act.⁵⁸
- M. Various BMPs and their design standards are listed in the BMP Manual.

§ 292-13. Exemptions.

- A. Regulated activities that result in cumulative earth disturbances less than (one acre maximum) are exempt from the requirements in §§ 292-14, 292-15 and Article IV of this chapter.

56. Editor's Note: See reference in § 292-36A.

57. Editor's Note: See reference in § 292-36E.

58. Editor's Note: See 32 P.S. § 680.1 et seq.

- B. Agricultural activity is exempt from the SWM site plan preparation requirements of this chapter, provided the activities are performed according to the requirements of 25 Pa. Code Ch. 102.
- C. Forest management and timber operations are exempt from the SWM site plan preparation requirements of this chapter, provided the activities are performed according to the requirements of 25 Pa. Code Ch. 102.
- D. Exemptions from any provisions of this chapter shall not relieve the applicant from the requirements in § 292-12D through K.
- E. The municipality may deny or revoke any exemption pursuant to this section at any time for any project that the municipality believes may pose a threat to public health and safety or the environment.

§ 292-14. Volume controls.

The low-impact development practices provided in the BMP Manual shall be utilized for all regulated activities to the maximum extent practicable. Water volume controls shall be implemented using the Design Storm Method in Subsection A or the Simplified Method in Subsection B below. For regulated activity areas equal or less than one acre that do not require hydrologic routing to design the stormwater facilities, this chapter establishes no preference for either methodology; therefore, the applicant may select either methodology on the basis of economic considerations, the intrinsic limitations on applicability of the analytical procedures associated with each methodology, and other factors.

- A. The Design Storm Method (CG-1 in the BMP Manual⁵⁹) is applicable to any size of regulated activity. This method requires detailed modeling based on site conditions.
 - (1) Do not increase the post-development total runoff volume for all storms equal to or less than the two-year twenty-four-hour duration precipitation.
 - (2) For modeling purposes:
 - (a) Existing (predevelopment) nonforested pervious areas must be considered meadow in good condition.
 - (b) Twenty percent of existing impervious area, when present, shall be considered meadow in good condition in the model for existing conditions.
- B. The Simplified Method (CG-2 in the BMP Manual⁶⁰) provided below is independent of site conditions and should be used if the Design Storm Method is not followed. This method is not applicable to regulated activities greater than one acre or for projects that require design of stormwater storage facilities. For new impervious surfaces:
 - (1) Stormwater facilities shall capture at least the first two inches of runoff from all new impervious surfaces.

59. Editor's Note: See reference in § 292-36A.

60. Editor's Note: See reference in § 292-36A.

- (2) At least the first one inch of runoff from new impervious surfaces shall be permanently removed from the runoff flow (i.e., it shall not be released into the surface waters of this commonwealth). Removal options include reuse, evaporation, transpiration and infiltration.
- (3) Wherever possible, infiltration facilities should be designed to accommodate infiltration of the entire permanently removed runoff; however, in all cases at least the first 0.5 inch of the permanently removed runoff should be infiltrated.
- (4) This method is exempt from the requirements of § 292-15, Rate controls.

§ 292-15. Rate controls.

- A. Areas not covered by a release rate map from an approved Act 167 stormwater management plan: Post-development discharge rates shall not exceed the predevelopment discharge rates for the one-, two-, five-, ten-, twenty-five-, fifty- and one-hundred-year twenty-four-hour storms. If it is shown that the peak rates of discharge indicated by the post-development analysis are less than or equal to the peak rates of discharge indicated by the predevelopment analysis for one-, two-, five-, ten-, twenty-five-, fifty- and one-hundred-year, twenty-four-hour storms, then the requirements of this section have been met. Otherwise, the applicant shall provide additional controls as necessary to satisfy the peak rate of discharge requirement.
- B. Areas covered by a release rate map from an approved Act 167 stormwater management plan: For the one-, two-, five-, ten-, twenty-five-, fifty- and one-hundred-year storms, the post-development peak discharge rates will follow the applicable approved release rate maps. For any areas not shown on the release rate maps, the post-development discharge rates shall not exceed the predevelopment discharge rates.

ARTICLE IV
Stormwater Management (SWM) Site Plan Requirements

§ 292-16. Plan requirements.

The following items shall be included in the SWM site plan:

- A. Appropriate sections from the municipal's Subdivision and Land Development Ordinance (see Chapter 300) and other applicable local ordinances shall be followed in preparing the SWM site plans. In instances where the municipality lacks subdivision and land development regulations, the content of SWM site plans shall follow the county's subdivision and land development ordinance.
- B. The municipality shall not approve any SWM site plan that is deficient in meeting the requirements of this chapter. At its sole discretion and in accordance with this article, when a SWM site plan is found to be deficient, the municipality may either disapprove the submission and require a resubmission, or in the case of minor deficiencies, the municipality may accept submission of modifications.
- C. Provisions for permanent access or maintenance easements for all physical SWM BMPs, such as ponds and infiltration structures, as necessary to implement the operation and maintenance (O&M) plan discussed in Subsection E(9) below.
- D. The following signature block for the municipality:

"(Name of municipal official or designee), on this date (date of signature), has reviewed and hereby certifies that the SWM site plan meets all design standards and criteria of municipal Ordinance No. 3-2012."
- E. The SWM site plan shall provide the following information:
 - (1) The overall stormwater management concept for the project.
 - (2) A determination of site conditions in accordance with the BMP Manual.⁶¹ A detailed site evaluation shall be completed for projects proposed in areas of carbonate geology or karst topography and other environmentally sensitive areas such as brownfields.
 - (3) Stormwater runoff design computations, and documentation as specified in this chapter, or as otherwise necessary to demonstrate that the maximum practicable measures have been taken to meet the requirements of this chapter, including the recommendations and general requirements in § 292-12.
 - (4) Expected project time schedule.
 - (5) A soil erosion and sediment control plan, where applicable, as prepared for and submitted to the approval authority.
 - (6) The effect of the project (in terms of runoff volumes, water quality, and peak flows) on surrounding properties and aquatic features and on any existing stormwater conveyance system that may be affected by the project.

61. Editor's Note: See reference in § 292-36A.

- (7) Plan and profile drawings of all SWM BMPs, including drainage structures, pipes, open channels, and swales.
- (8) SWM site plan shall show the locations of existing and proposed on-lot wastewater facilities and water supply wells.
- (9) The SWM site plan shall include an O&M plan for all existing and proposed physical stormwater management facilities. This plan shall address long-term ownership and responsibilities for O&M as well as schedules and costs for O&M activities.

§ 292-17. Plan submission.

A. Typically five copies of the SWM site plan shall be submitted as follows:

- (1) Typically two copies to the municipality.
- (2) Typically one copy to the municipal engineer (when applicable).
- (3) Typically one copy to the County Conservation District.
- (4) Typically one copy to the County Planning Commission/Office.

B. Additional copies shall be submitted as requested by the municipality or DEP.

§ 292-18. Plan review.

- A. SWM site plans shall be reviewed by the municipality for consistency with the provisions of this chapter.
- B. The municipality shall notify the applicant in writing within 45 days whether the SWM site plan is approved or disapproved. If the SWM site plan involves a subdivision and land development plan, the notification shall occur within the time period allowed by the Municipalities Planning Code (90 days). If a longer notification period is provided by other statute, regulation or ordinance, the applicant will be so notified by the municipality.
- C. If the municipality disapproves the SWM site plan, the municipality will state the reasons for the disapproval in writing. The municipality also may approve the SWM site plan with conditions and, if so, shall provide the acceptable conditions for approval in writing.

§ 292-19. Modification of plans.

A modification to a submitted SWM site plan that involves a change in SWM BMPs or techniques, or that involves the relocation or redesign of SWM BMPs, or that is necessary because soil or other conditions are not as stated on the SWM site plan as determined by the municipality shall require a resubmission of the modified SWM site plan in accordance with this article.

§ 292-20. Resubmission of disapproved SWM site plans.

A disapproved SWM site plan may be resubmitted, with the revisions addressing the

municipality's concerns, to the municipality in accordance with this article. The applicable review fee must accompany a resubmission of a disapproved SWM site plan.

§ 292-21. Authorization to construct and term of validity.

The municipality's approval of an SWM site plan authorizes the regulated activities contained in the SWM site plan for a maximum term of validity of five years following the date of approval. The municipality may specify a term of validity shorter than five years in the approval for any specific SWM site plan. Terms of validity shall commence on the date the municipality signs the approval for an SWM site plan. If an approved SWM site plan is not completed according to § 292-22 within the term of validity, then the municipality may consider the SWM site plan disapproved and may revoke any and all permits. SWM site plans that are considered disapproved by the municipality shall be resubmitted in accordance with § 292-20 of this chapter.

§ 292-22. As-built plans, completion certificate, and final inspection.

- A. The developer shall be responsible for providing as-built plans of all SWM BMPs included in the approved SWM site plan. The as-built plans and an explanation of any discrepancies with the construction plans shall be submitted to the municipality.
- B. The as-built submission shall include a certification of completion signed by a qualified professional verifying that all permanent SWM BMPs have been constructed according to the approved plans and specifications. If any licensed qualified professionals contributed to the construction plans, then a licensed qualified professional must sign the completion certificate.
- C. After receipt of the completion certification by the municipality, the municipality may conduct a final inspection.

ARTICLE V
Operation and Maintenance

§ 292-23. Responsibilities of developers and landowners.

- A. The municipality shall make the final determination on the continuing maintenance responsibilities prior to final approval of the SWM site plan. The municipality may require a dedication of such facilities as part of the requirements for approval of the SWM site plan. Such a requirement is not an indication that the municipality will accept the facilities. The municipality reserves the right to accept or reject the ownership and operating responsibility for any portion of the stormwater management controls.
- B. Facilities, areas or structures used as stormwater management BMPs shall be enumerated as permanent real estate appurtenances and recorded as deed restrictions or conservation easements that run with the land.
- C. The O&M plan shall be recorded as a restrictive deed covenant that runs with the land.
- D. The municipality may take enforcement actions against an owner for any failure to satisfy the provisions of this article.

§ 292-24. Operation and maintenance agreements.

- A. Prior to final approval of the SWM site plan, the property owner shall sign and record an operation and maintenance (O&M) agreement (see Appendix A⁶²) covering all stormwater control facilities which are to be privately owned.
 - (1) The owner, successor and assigns shall maintain all facilities in accordance with the approved maintenance schedule in the O&M plan.
 - (2) The owner shall convey to the municipality conservation easements to assure access for periodic inspections by the municipality and maintenance, as necessary.
 - (3) The owner shall keep on file with the municipality the name, address and telephone number of the person or company responsible for maintenance activities; in the event of a change, new information shall be submitted by the owner to the municipality within 10 working days of the change.
- B. The owner is responsible for operation and maintenance (O&M) of the SWM BMPs. If the owner fails to adhere to the O&M agreement, the municipality may perform the services required and charge the owner appropriate fees. Nonpayment of fees may result in a lien against the property.

§ 292-25. Performance guarantee.

For SWM site plans that involve subdivision and land development, the applicant shall provide a financial guarantee to the municipality for the timely installation and proper

62. Editor's Note: Appendix A is on file in the Township offices.

construction of all stormwater management controls as required by the approved SWM site plan and this chapter in accordance with the provisions of Sections 509, 510 and 511 of the Pennsylvania Municipalities Planning Code.

ARTICLE VI
Fees and Expenses

§ 292-26. General.

The municipality may include all costs incurred in the review fee charged to an applicant. The review fee may include, but not be limited to, costs for the following:

- A. Administrative/clerical processing.
- B. Review of the SWM site plan.
- C. Attendance at meetings.
- D. Inspections.

ARTICLE VII
Prohibitions

§ 292-27. Prohibited discharges and connections.

- A. Any drain or conveyance, whether on the surface or subsurface, that allows any nonstormwater discharge including sewage, process wastewater and wash water to enter a regulated small MS4 or to enter the waters of this commonwealth is prohibited.
- B. No person shall allow or cause to allow discharges into a regulated small MS4 or discharges into waters of this commonwealth which are not composed entirely of stormwater, except: (1) as provided in Subsection C below; and (2) discharges allowed under a state or federal permit.
- C. The following discharges are authorized unless they are determined to be significant contributors to pollution of a regulated small MS4 or to the waters of this commonwealth:
 - (1) Discharges from firefighting activities.
 - (2) Potable water sources, including waterline flushing.
 - (3) Irrigation drainage.
 - (4) Air-conditioning condensate.
 - (5) Springs.
 - (6) Water from crawl space pumps.
 - (7) Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents are not used.
 - (8) Diverted stream flows.
 - (9) Flows from riparian habitats and wetlands.
 - (10) Uncontaminated water from foundations or from footing drains.
 - (11) Lawn watering.
 - (12) Dechlorinated swimming pool discharges.
 - (13) Uncontaminated groundwater.
 - (14) Water from individual residential car washing.
 - (15) Routine external building wash down (which does not use detergents or other compounds).
- D. In the event that the municipality or DEP determines that any of the discharges identified in Subsection C significantly contribute pollutants to a regulated small MS4 or to the waters of this commonwealth, the municipality or DEP will notify

the responsible person(s) to cease the discharge.

§ 292-28. Roof drains and sump pumps.

Roof drains and sump pumps shall discharge to infiltration or vegetative BMPs.

§ 292-29. Alteration of SWM BMPs.

No person shall modify, remove, fill, landscape or alter any SWM BMPs, facilities, areas or structures without the written approval of the municipality.

ARTICLE VIII
Enforcement and Penalties

§ 292-30. Right of entry.

Upon presentation of proper credentials, the municipality may enter at reasonable times upon any property within the municipality to inspect the condition of the stormwater structures and facilities in regard to any aspect regulated by this chapter.

§ 292-31. Inspection.

SWM BMPs should be inspected by the landowner or the owner's designee (including the municipality for dedicated and owned facilities), according to the following list of minimum frequencies:

- A. Annually for the first five years.
- B. Once every three years thereafter.
- C. During or immediately after the cessation of a ten-year or greater storm.

§ 292-32. Enforcement.

- A. It shall be unlawful for a person to undertake any regulated activity except as provided in an approved SWM site plan, unless specifically exempted in § 292-13.
- B. It shall be unlawful to violate § 292-29 of this chapter.
- C. Inspections regarding compliance with the SWM site plan are a responsibility of the municipality.

§ 292-33. Suspension and revocation.

- A. Any approval or permit issued by the municipality pursuant to this chapter may be suspended or revoked for:
 - (1) Noncompliance with or failure to implement any provision of the approved SWM site plan or O&M agreement.
 - (2) A violation of any provision of this chapter or any other applicable law, ordinance, rule or regulation relating to the regulated activity.
 - (3) The creation of any condition or the commission of any act during the regulated activity which constitutes or creates a hazard, nuisance, pollution or endangers the life or property of others.
- B. A suspended approval may be reinstated by the municipality when:
 - (1) The municipality has inspected and approved the corrections to the violations that caused the suspension.
 - (2) The municipality is satisfied that the violation has been corrected.
- C. An approval that has been revoked by the municipality cannot be reinstated. The

applicant may apply for a new approval under the provisions of this chapter.

- D. If a violation causes no immediate danger to life, public health, or property, at its sole discretion the municipality may provide a limited time period for the owner to correct the violation. In these cases, the municipality will provide the owner, or the owner's designee, with a written notice of the violation and the time period allowed for the owner to correct the violation. If the owner does not correct the violation within the allowed time period, the municipality may revoke or suspend any or all applicable approvals and permits pertaining to any provision of this chapter.

§ 292-34. Violations and penalties.

- A. Any person who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this chapter and each day the same is continued shall be deemed a separate offense.⁶³
- B. In addition, the municipality may institute injunctive, mandamus or any other appropriate action or proceeding at law or in equity for the enforcement of this chapter. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus or other appropriate forms of remedy or relief.

§ 292-35. Appeals.

- A. Any person aggrieved by any action of the municipality or its designee relevant to the provisions of this chapter may appeal to the municipality within 30 days of that action.
- B. Any person aggrieved by any decision of the municipality relevant to the provisions of this chapter may appeal to the County Court of Common Pleas in the county where the activity has taken place within 30 days of the municipality's decision.

63. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ARTICLE IX

References**§ 292-36. References.**

The following are resources referenced in this chapter:

- A. Pennsylvania Department of Environmental Protection. No. 363-0300-002 (December 2006), as amended and updated. Pennsylvania Stormwater Best Management Practices Manual, Harrisburg, PA.
- B. Pennsylvania Department of Environmental Protection. No. 363-2134-008 (April 15, 2000), as amended and updated. Erosion and Sediment Pollution Control Program Manual. Harrisburg, PA.
- C. U.S. Department of Agriculture, National Resources Conservation Service (NRCS). National Engineering Handbook. Part 630: Hydrology, 1969-2001. Originally published as the National Engineering Handbook, Section 4: Hydrology. Available from the NRCS online at: <http://www.nrcs.usda.gov/>.
- D. U.S. Department of Agriculture, Natural Resources Conservation Service. 1986. Technical Release 55: Urban Hydrology for Small Watersheds, 2nd Edition. Washington, D.C.
- E. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Hydrometeorological Design Studies Center. 2004-2006. Precipitation-Frequency Atlas of the United States, Atlas 14, Volume 2, Version 3.0, Silver Spring, Maryland. Internet address: <http://hdsc.nws.noaa.gov/hdsc/pfds/>.

Chapter 294

STREETS AND SIDEWALKS

GENERAL REFERENCES

Erosion and sediment control — See Ch. 286.

ARTICLE I
Excavations and Openings
[Adopted 5-14-1987 by Ord. No. 2-1987]

§ 294-1. Permit fees. [Amended 11-9-2017 by Ord. No. 4-2017]

Every individual, company, partnership or corporation desiring to open or excavate any avenue, street, court, alley or other public right-of-way or berms thereof within the Borough of Dalton shall first secure a permit from the Mayor or Secretary of the Borough of Dalton, for the issuance of which permit a fee as set pursuant to resolution of the Dalton Borough Council shall be charged for each 200 lineal feet of excavation or fraction thereof. For emergency repairs, a permit must be secured within two business days after the date of the emergency.

§ 294-2. Deposit to cover restoration and repair. [Amended 11-9-2017 by Ord. No. 4-2017]

In addition to said permit, any individual, company, partnership or corporation shall be required to deposit with the Borough of Dalton \$500 for each 30 square feet or fraction thereof of surface opening, which deposit will be returned after the opening or excavation has been repaired and restored and the appropriate surface replaced in accordance with § 294-2B of this article to the satisfaction of the Public Works Committee or else forfeited in lieu of said repair and restoration.

- A. Where a cut must be made in a paved street or road, the surface must be cut with a jack hammer using a spade bit or with a masonry saw. All cuts in the surface shall be straight-edged and no tearing of paved surface will be allowed.
- B. All excavations or cuts in roads and berms will be backfilled with No. 2A modified stone and will be properly tamped every six inches with a vibrator or whacker-type tamper. Where a paved surface is involved, excavation will be backfilled with No. 2A modified stone to within six inches of the top of the original pave. The final layer of grade will be material comparable to the original surface. All spoil from the excavation shall be removed by the individual, company, partnership or corporation to which the permit is issued.

§ 294-3. Conditions for further excavation.

Each 200 lineal feet or fraction thereof of excavation must be properly repaired and restored in accordance with § 294-2B of this article to the satisfaction of the Public Works Committee before any further excavation is made and additional permits issued.

§ 294-4. Violations and penalties. [Amended 11-9-2017 by Ord. No. 4-2017]

Any person who violates or permits a violation of this article shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment

for not more than 30 days, provided that each violation of any provision of this article and each day the same is continued shall be deemed a separate offense.

ARTICLE II
Maintenance of Driveway Culverts, Ditches and Gutters
[Adopted 5-8-2008 by Ord. No. 2-2008]

§ 294-5. Title.

The short title of this article shall be the "Borough Driveway Culvert, Ditch and Gutter Maintenance Ordinance."

§ 294-6. Definitions.

As used in this article, the following terms shall have the meanings indicated:

DRIVEWAY CULVERT — Any pipe, conduit or similar structure located beneath the edge of a private driveway within the curb, ditch or swale upon land abutting the sides of public roads.

PROPERTY OWNERS — Owners of residential, commercial or institutional real estate located within Dalton Borough.

§ 294-7. Establishment of program to regulate driveway culvert/pipes, maintenance of ditches, curbs and gutters.

There is hereby established by the Borough of Dalton a program that mandates that all owners of property located within Dalton Borough shall be responsible for the cleaning, maintaining and repairing of all driveway culvert pipes and cleaning of all gutters, ditches and curb areas located along the property line of real estate abutting public roads within Dalton Borough and prohibiting property owners from placing any pipe culvert or stormwater facilities within the curb area, ditch, swale or culverts located along public roads within Dalton Borough.

§ 294-8. Property owner responsibilities.

- A. All property owners within Dalton Borough are responsible for cleaning, maintaining and repairing driveway culvert/pipes.
- B. All property owners are responsible for cleaning all ditches, gutters and swales running along their property line adjacent to or in the easement area along public roads within Dalton Borough.
- C. All property owners are prohibited from placing pipe or culverts within the ditch, curb or swale area along public roads within Dalton Borough in the areas along their property line or in the public right-of-way easement without the prior written approval of Dalton Borough Council.
- D. No property owner may install or reinstall a driveway culvert/drainage pipe without the express written permission of the Borough of Dalton.

§ 294-9. Enforcement and administration.

The Borough is authorized and directed to enforce this article. The same is hereby authorized and directed to establish and promulgate reasonable regulations as to the

manner in which matters are required to implement and enforce this article. The Dalton Borough Zoning Officer is hereby authorized and empowered to enforce the provisions of this article and any regulations promulgated in furtherance thereof. The Borough of Dalton may change, modify, repeal or amend any portion of this article or the companion regulations.

§ 294-10. Violation and penalties.

- A. Any property owner who violates the provisions of this article or the provisions of the Borough Code shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this article and each day the same is continued shall be deemed a separate offense. **[Amended 11-9-2017 by Ord. No. 4-2017]**
- B. The Borough reserves the right to install remedial swales, gutters and culverts at the expense of the property owner.
- C. Upon the neglect of any property owner to comply with the requirements of this article or the provisions of the Borough Code as set out in 8 Pa.C.S.A. § 1801 et seq., the Borough, after notice, may cause the grading, paving, repairing, curbing, cleaning of swales, gutters and culverts to be done at the cost of the property owner, and the Borough may collect the cost thereof with 10% additional, together with all charges and expenses, from such owner, and may file a municipal claim therefor or collect the same by action in assumpsit. The Borough also reserves the right to perform emergency repairs as per the provisions of the Borough Code, 8 Pa.C.S.A. § 1806.

§ 294-11. Authority.

This article is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

ARTICLE III
Construction Within Rights-of-Way
[Adopted 12-13-2018 by Ord. No. 3-2018]

§ 294-12. Authority and purpose.

- A. Authority. This article is enacted by the Council of the Borough of Dalton under the authority of the Act of Legislature, February 1, 1966, P.L. (1965) as re-enacted and amended May 17, 2012, P.L. 262, No. 94, 53 P.S. § 43, known as the Borough Code and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.
- B. Purpose. The purposes of this article are to:
- (1) Require permits for access to the right-of-way of Borough roads for railways, driveways, private roads, electricity, telephone and cable television poles and conduits, utilities (such as gas, water and sewer lines), and similar encroachments and obstructions, and any other structures; it being in the public interest to regulate:
 - (a) The location and construction of utility facilities and other such structures within the Borough's right-of-way; and
 - (b) The location, design, construction, maintenance and drainage of access driveways and private roads within the Borough's rights-of-way to ensure the structural integrity of streets, economy of maintenance, preservation of proper drainage, and safe and convenient passage of traffic.
 - (2) Authorize the Borough to remove or permit the removal from any Borough right-of-way any grass, brush, shrub, tree or other vegetation deemed to constitute a hazardous or dangerous condition to the use of the road or those which impair the use or maintenance of the road.
 - (3) Authorize the Borough to require the removal of any nuisance or obstruction on any Borough road or associated drainage facility created by felling trees, making fences, turning the road, diverting water onto the road, filling or in any other manner.
 - (4) Describe the specifications and requirements for restoration of any Borough road or right-of-way following the installation or repair of any railways, driveways, private roads, electricity, telephone and cable television poles and conduits, utilities (such as gas, water and sewer lines), and similar encroachments and obstructions, and any other structures.

§ 294-13. Definitions.

As used in this article, the following terms shall have the meanings indicated:

APPLICANT — Any person who submits an application for a permit.

BOROUGH — Dalton Borough, Lackawanna County; and in cases where the text of this article so implies, the Dalton Borough Council, its agents or employees.

BOROUGH ROAD — The entire right-of-way established for the use of vehicles, including, but not limited to any public street, avenue, road, square, alley, highway, or easement within the Borough's boundary limits, excluding the designated curb and sidewalk area.

BUSINESS DAY — Monday through Friday, except designated holidays.

CONCRETE — Soil cement, plain cement concrete or reinforced cement concrete and material contained in the base course of some Borough roads.

COST — Actual expenditures incurred by the Borough for labor, equipment and materials, which includes overhead.

DISTURBANCE — Any change in the road surface that alters the preexisting conditions.

DRIVEWAY — A private access from an individual lot to the road right-of-way.

EMERGENCY — Any condition constituting a clear and present danger to life or property by reason of escaping gas, exposed wires or other breaks or defects in the user's line.

EXCAVATABLE FLOWABLE FILL — Also referred to as "controlled density fill." A low-strength flowable mixture of cement, pozzolan (fly ash), sand and water used as a backfill material, placed by pouring it into the excavation or opening, requiring no subsequent vibration or tamping to achieve consolidation.

EXCAVATION — Any activity within the right-of-way of any road, alley or cartway which involves cutting, breaking or disturbing of the surface thereof, with the exception of reconstruction of said road, alley or cartway. In this article, the term "opening" shall have essentially the same meaning as "excavation."

PENNDOT — Pennsylvania Department of Transportation.

PENNDOT ROAD — Any Pennsylvania state road located within the municipal boundaries of Dalton Borough, Pennsylvania.

PERMIT FEE — A fee paid by the permittee to the Borough to cover the costs of issuing, processing and filing the street opening permit and all reasonable costs associated with the inspection of an excavation and restoration of road opening.

PERMITTEE — Any person who has been issued a permit and has agreed to fulfill all the provisions of this article.

PERSON — Any natural person, partnership, firm, association, corporation, public utility company, or municipal authority.

PUBLIC UTILITY — Any utility company franchised by the Public Utility Commission of the Commonwealth of Pennsylvania.

RECONSTRUCTION — The complete removal of the existing pavement structure and the construction of new subbase, base course and wearing course of a Borough road or street.

RESURFACE — A process which provides a new wearing surface in a certain paved road area between curbs with the same material which was existing prior to excavation, unless the Borough Engineer deems another material to be appropriate.

RIGHT-OF-WAY — Land reserved for use as a road. Right-of-way shall also include

any road which is owned in fee simple title by the Borough.

SQUARE YARD — Surface space that measures out to the equivalent of a square one yard (three feet) wide by one yard (three feet) long. There are nine square feet to a square yard.

STRUCTURE — A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of the land.

§ 294-14. Permits.

A. Permits required.

- (1) No work shall be performed within the right-of-way, involving the placing or repair of utility facilities or other structures, opening of the surface for any purpose, laying out or constructing of driveways, including sluice pipe placement, repair or replacement, paving, repaving, grading, regrading of driveways or any kind of modification to an existing driveway, roads or railways, or any other means of ingress or egress, or altering of drainage without first obtaining a permit from the Borough. Intended permittee shall apply for a permit at least 30 days prior to the start of utility work. All permits issued pursuant to this article require compliance with each requirement herein, including but not limited to restoration specifications (as described more fully in § 294-17 hereof). In addition, at least seven days prior to beginning work pursuant to the permit, all contractors performing work in accordance with a permit issued pursuant to this article shall be required to provide the Borough with proof of general liability insurance as per the requirements of § 294-16B and reasonable in relation to the scope of the construction project (as determined by the Borough). At least seven days prior to beginning work pursuant to the permit, permittee shall also be required to tender to the Borough a deposit to be held in escrow and as provided for in § 294-16B for any Borough inspection or inspection activities, in an amount determined by the Borough based upon the scope of the work to be performed. All unused funds deposited in an escrow for inspection activities shall be returned following satisfactory completion of the work.
- (2) Upon completion of a road paving/resurfacing project by any entity, Dalton Borough will not allow the street to be excavated for any reason for five years, except for emergency situations. (This includes any and all activities defined as upgrades, improvements and/or maintenance to utility systems.) Permits will not be issued to any entity that is desirous to conduct excavations on a road within a five-year period following a paving/resurfacing of Borough roads.
- (3) Any person working in the vicinity of any Borough road who in any manner disturbs such road or who in any manner causes damage to a street shall be required by this article to obtain a permit and correct this damage in accordance with the directives of the Borough.
- (4) No permit shall be issued to any applicant unless the applicant has paid to the Borough any and all moneys, then due to the Borough, for prior excavations made or for any loss, damages or expense in any manner occasioned by or

arising from the work done by the applicant under the provisions of this article.

- B. Emergency repairs. Nothing in this section shall be construed to require a permit in advance for emergency repairs necessary for the safety of the public or restoration or continuance of public utility service or other public service, but application for such permit and the fees shall be submitted as herein prescribed the next business day following the start of the work, after which time the remaining provisions, escrow monies, permit fees, Borough's costs of engineering and inspection of this article shall apply, including all restoration specifications.

§ 294-15. Application for permit.

- A. Permits shall be issued only to a person or their authorized agent furnishing public utility services or the owner or owners of the real property adjoining the location where such opening or excavation is to be made.
- B. Any person who shall desire to make any opening or excavation in any of the roads in the Borough shall make application to the Borough Engineer in writing, for that purpose. Such application and any required accompanying documentation shall be made upon blanks to be furnished by the Borough and shall set forth - at minimum - the name of the applicant, the exact location of the proposed opening or excavation and the approximate size or depth thereof, the full scope of work to be included in the project, the date or dates during which such excavation is to be permitted and the date such excavation is to be refilled and resurfaced in the manner hereinafter provided. An applicant shall furnish a drawing of the proposed opening site upon request by the Borough Engineer.
- C. The application shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Borough and the laws of the commonwealth in relation thereto and that the applicant shall well and truly save, defend and keep harmless the Borough from and indemnify it against any and all actions, suits, demands, payments, costs and charges for or by reason of the proposed opening or excavation and all damages to persons or property resulting in any manner therefrom or occurring in the prosecution of the work connected therewith or from any other matter, cause or thing relating thereto. In the event that the suit shall be brought against the Borough either independently or jointly with the permittee, and in the event of a final judgment being obtained against the Borough either independently or jointly with the permittee, the permittee shall pay such judgment with all costs, including reasonable attorney's fees, and hold the Borough harmless therefrom.
- D. The application for a permit shall be on a form prescribed by the Borough and the required number of copies (as resolved by Dalton Borough Council, which resolution may be amended from time to time) shall be submitted to the Borough Engineer. The application for permit shall be accompanied by the required number of copies of a plan detailing the location and pertinent dimensions of the opening, the proposed installation and related street features (width of traveled roadway, right-of-way lines, distance to the nearest intersecting street, and for driveways, distance to side property lines), detailed restoration plans, and any other information deemed necessary by the Borough to confirm compliance with this article.

§ 294-16. Fees and costs.**A. Fees.**

- (1) Any person who desires to do any street or road opening or excavation of a road shall pay a permit application fee and inspection fees to be held in escrow for the benefit of the Borough, which amounts shall be determined by the Borough by resolution from time to time and reflected on a schedule of fees.
- (2) The application for permit shall be accompanied by processing fees (separate and apart from inspection costs) in accordance with the schedule of fees in effect when the permit is issued, as adopted and amended from time to time by resolution of the Board of Dalton Borough Council. In addition, the Borough may assess the applicant an additional fee to cover the cost of any engineering or other consultant services required by the Borough in the administration of this article or for any necessary inspections. This engineering assessment shall be determined by the Borough in its discretion, depending on the scope of the subject project.

B. Costs.

- (1) Costs of inspection for installation or repair of utilities and the restoration of Borough roads and rights-of-way.
 - (a) At least seven days prior to the start of construction as permitted, permittee shall tender to the Borough a deposit as per Subsection B(3) and Resolution No. 1 of 2017 establishing inspection fees to be held in escrow for any Borough inspection or inspection activities, in an amount determined by the Borough based upon the scope of the work to be performed. All unused funds deposited in an escrow for inspection activities shall be returned to permittee following satisfactory completion of the work.
 - (b) All costs of inspection that exceed the amount held in escrow pursuant to this article shall be remitted to Dalton Borough within 15 days of written demand therefore.
- (2) Any costs to the Borough associated with completion of work or restoration not performed by the permittee, and any interest charge assessed, shall be recoverable by the Borough in any manner available in law.
- (3) Permit fees, inspection fees, and escrow amounts shall be as per the current Dalton Borough resolution establishing a schedule of fees for utility installation, rehabilitation, and repair.
- (4) Contractor's insurance. Contractors shall submit proof of compliance with Dalton Borough's insurance requirements as established by resolution from time to time.

§ 294-17. Conditions of permit.

- A. Drainage control. No increase in the flow of water into drainage facilities or onto the right-of-way or onto the property of some other person is permitted without a

drainage control plan designed to minimize and safely divert such flows. Such plan shall be submitted by the applicant, and if required by the Borough Engineer, the plan shall be prepared by a professional engineer registered in the Commonwealth of Pennsylvania. Drainage plans shall comply with all other ordinances of the Borough which regulate drainage and stormwater. No permit shall be issued until the Borough Engineer determines that the drainage control plan is adequate.

- B. Work standards. All work shall be done in such a manner as is consistent with the safety of the public. Where traffic control is necessary, it shall be accomplished according to the relevant standards of the Pennsylvania Department of Transportation, including those standards detailed in PennDOT Publication 203 where applicable, and such other safety measures as determined by the Borough are required to provide for the safe movement of traffic through the work site.
- C. Damage to public facilities. The permittee shall restore all pavement and road shoulders in accordance with the specifications contained in Subsection G at the sole expense of the permittee. Permittee is solely responsible for repairing any failure of facilities, including but not limited to restoration work, within five years of completion of the work. If the permittee fails to comply with this requirement, the Borough shall complete the necessary repairs and collect the costs as per § 294-16.
- D. Driveway and street location.
 - (1) General rule. Driveways and roads shall be located, designed, constructed and maintained in such a manner as not to interfere or be inconsistent with the design, maintenance and drainage of the road being intersected.
 - (2) General location restrictions. Access driveways and roads shall only be permitted at locations in which:
 - (a) Sight distance is adequate to safety allow each permitted movement to be made into or out of the access driveway. All driveways and streets must meet minimum PennDOT sight distance requirements and standards.
 - (b) The free movement of normal traffic is not impaired.
 - (c) The driveway or street will not create a hazard.
 - (d) The driveway or street will not create an area of undue traffic congestion on the intersecting road.
 - (e) Driveways shall be located as mandated in the standards as specified by the Pennsylvania Department of Transportation, Title 67 PA Code Chapter 441.
 - (3) The Borough may restrict access to right-turn-only ingress and egress or to another state-maintained road or local road if safe and efficient movements cannot be accommodated pursuant to the standards in this article. In order to promote and protect the public health, safety and welfare, the standards contained in this subsection are not limited to new construction.
- E. Driveway and street design standards.

- (1) All driveways shall meet the minimum sight distance requirement as per Title 67 PA Code Chapter 441. All driveways must be constructed according to the most current standards of the Borough limited to those standards contained in Title 67 Pa. Code § 441. Such specifications include but are not limited to those standards included in the Borough Subdivision and Land Development Ordinance⁶⁴ and all amendments thereto.
- (2) All streets shall be constructed in accordance with PennDOT Specifications, Form 408, and in accordance with the standards contained in the following table; provided, however, that for local access streets including service roads and marginal access streets, the municipality will consider any alternative supported by a maintenance bond to be provided by the developer to cover a period of three years from the date on which the street is opened to traffic.

Street Types	9.5 mm Superpave	25 mm Superpave	Aggregate Subbase AASHTO #1 Coarse Agg. W/# 10 choke (PennDOT 408)	Subbase No. 2A	Shoulder Width
Arterial	1 1/2 inches	8 inches	18 inches	6 inches	10 feet
Collector street	1 1/2 inches	7 inches	16 inches	6 inches	10 feet
Local access street	1 1/2 inches	6 inches	12 inches	4 inches	8 feet
Marginal access street	1 1/2 inches	4 inches	10 inches	4 inches	8 feet
Private road	1 1/2 inches	4 inches	10 inches	4 inches	8 feet
*Industrial subdivisions	1 1/2 inches	7 inches	14 inches	6 inches	8 feet
*Industrial land dev.	1 1/2 inches	7 inches	14 inches	6 inches	8 feet
*Commercial land dev.	1 1/2 inches	5 inches	10 inches	4 inches	8 feet
*Large scale dev.	1 1/2 inches	4 inches	10 inches	4 inches	8 feet

*Subject to review by township depending upon proposed uses.

Collector street: 10 to 50 single-family residences.

Local access street: 8 to 10 single-family residences.

Marginal access street: 1 to 3 single-family residences.

64. Editor's Note: See Ch. 300, Subdivision and Land Development.

Private road: up to 3 single-family residences.

Industrial subdivision and industrial land development to include manufacturing, warehousing, and office complexes gaining access from same proposed roadway (not an existing public roadway).

Large scale developments, condos and townhouses: more than 10 units from same proposed roadway (not an existing public roadway).

Commercial land development: more than three multiple commercial facilities gaining access from same proposed roadway (not an existing public roadway).

- (3) All driveways and roads shall be constructed so as not to impair drainage within the right-of-way, alter the stability of the improved area or change the drainage of adjacent areas. Drainage shall not be permitted to flow upon the cartway of the Borough road. Where a drainage ditch or swale exists, the permittee shall install adequate pipe under the driveway or private road. Drainage pipes installed shall be of a size necessary to carry the anticipated flow but not less than 15 inches in diameter and of the smooth wall type. The minimum length of the culvert shall be 30 feet or as otherwise necessary to provide for access of emergency and maintenance vehicles. Driveways shall have a grade not to exceed 4% for a distance within 40 feet of the Township road right-of-way. Entrances shall be rounded at a minimum radius of five feet or shall have a flare construction that is equivalent to this radius at the point of intersection with the cartway edge.

F. Depth of pipes and culverts and backfilling of trench. Subject to the specifications in Subsection G:

- (1) Temporary and permanent depth of pipes and culverts, and backfilling of trenches, shall comply with the standards established by Subsections F and G of this article and applicable Borough resolutions, as amended from time to time.
- (2) The minimum cover over any pipe or culvert under the subgrade elevation shall be one foot.
- (3) Any utility crossing a Dalton Borough road within a 2.5-foot depth from the surface shall be run through a PVC pipe Schedule 40 of the appropriate diameter to accommodate said utility from road right-of-way line to road right-of-way line. Any utility crossing a Dalton Borough road deeper than a 2.5-foot depth from the surface shall be ran through a PVC pipe Schedule 80 of the appropriate diameter to accommodate said utility from road right-of-way line to road right-of-way line. All backfill and repavement restoration requirements of this article shall apply to said installations.
- (4) Trenches shall be backfilled with No. 2A coarse aggregate to the surface or to the bottom of the necessary Superpave where Superpave is needed for pavement restoration. All backfill material shall be placed in eight-inch layers with compaction by approved vibratory compaction equipment. Each layer for its full width shall be compacted to not less than 97% of the determined dry weight density.

- (5) The placement of utilities underground shall be identified on the ground surface with permanent markers as required by the Township or in accord with the standard practice of the governing utility provider.
- G. Road restoration following installation of construction in, along, or under Borough roads. In all cases contractor must contact PA One Call three days prior to any construction work. Permanent repairs to any and all pavement cuts should be made within 10 days of completion of the work designated in the permit; permanent repairs to any and all shoulder cuts shall be made within 15 days of the work designated in the permit.
 - (1) Utility trench construction greater than six feet outside the edge of pave on either side of a Dalton Borough road.
 - (a) At a minimum, the utility company shall be responsible to remove broken parts of the edge of pave on each side of the Borough road.
 - (b) Fill those areas with 25 mm Superpave (PennDOT 408) either to within 1 1/2 inches of existing road surface, if no overlay is required from the inspection process, or to the surface of the existing road surface, if an overlay is required.
 - (c) Provide necessary depth of 9.5 mm Superpave (PennDOT 408) to meet the existing pavement over the 25 mm Superpave (PennDOT 408) from above.
 - (d) Provide necessary work as per inspection in Subsection (g).
 - (e) Fill all potholes with 9.5 mm Superpave (PennDOT 408) to the surface of the existing road pavement.
 - (f) Seal interface of patch(es) and existing pavement surface with a twelve-inch width of AC-20 asphalt.
 - (g) Upon completion of utility construction (either parallel with road or crossing road), utility representative shall contact Dalton Borough stating all utility installation has been completed. A Dalton Borough representative will perform a road inspection to determine damage(s) caused by aforesaid construction installation. Depending upon the outcome of the "after construction inspection of the Borough road," the Borough include the following:
 - [1] One-inch depth scratch coat over either half or full width of road.
 - [2] Two-inch depth scratch coat over either half or full width of road.
 - [3] Mill half width of township road; repave with 1 1/2-inch depth of 9.5 mm depth Superpave.
 - [4] Overlay of full width of the subject township road (all pavement shall be PennDOT 408 Superpave, 9.5 mm wearing, 19.5 mm or 25 mm as determined during the township inspection).
 - [5] A two-foot width shoulder of 2A aggregate may be necessary.

- [6] Trench restoration may include twelve-inch depth of AASHTO #1 stone; four-inch depth of 2A aggregate; six-inch depth of 25 mm BCBC Superpave, and depending upon proximity to or within the township road, a 1 1/2-inch depth of 9.5 mm Superpave shall be constructed.
 - [7] Trench restoration may include milling an eight-inch depth two-to-four-foot width as determined by the township site inspector's inspection and placement of eight-inch depth of 25 mm BCBC Superpave, and depending upon the proximity to or within the township road, 1 1/2-inch depth of 9.5 mm Superpave shall be constructed.
- (2) Utility trench construction within six feet of the edge of pave of a Dalton Borough road shall mill and overlay half of the width of the Borough road. If any portion of the pavement is broken or undercut, mill and pave full width of the Borough road and as provided below.
- (a) At a minimum, the utility company shall be responsible to remove broken parts of the edge of pave on each side of the Borough road.
 - (b) Fill those areas with 25 mm Superpave (PennDOT 408) either to within 1 1/2 inches of existing road surface, if an overlay is required from the inspection process, or to the surface of the existing road surface, if an overlay is required.
 - (c) Provide necessary depth of 9.5 mm Superpave (PennDOT 408) to meet the existing pavement over the 25mm Superpave (PennDOT 408) from above.
 - (d) Fill all pot holes with 9.5 mm Superpave (PennDOT 408) to the surface of the existing road pavement.
 - (e) Provide work as per inspection in Subsection (g).
 - (f) Seal all pavement interface(s) of pothole patch(es), longitudinal joints, traverse joints, etc., with AC-20 asphalt.
 - (g) Upon completion of utility construction (either parallel with road or crossing road), utility representative shall contact Dalton Borough stating all utility installation has been completed. A Dalton Borough representative will perform a road inspection to determine damage(s) caused by aforesaid construction installation. Depending upon the outcome of the "after construction inspection of the township road," the Borough will determine what rehabilitation will be necessary. Rehabilitation could include the following:
 - [1] One-inch depth scratch coat over either half or full width of road.
 - [2] Two-inch depth scratch coat over either half or full width of road.
 - [3] Mill half width of township road; repave with 1 1/2-inch depth of 9.5 mm depth Superpave.

- [4] Overlay of full width of the subject township road (all pavement shall be PennDOT 408 Superpave, 9.5 mm wearing, 19.5 mm or 25 mm as determined during the township inspection).
 - [5] A two-foot width shoulder of 2A aggregate may be necessary.
 - [6] Trench restoration may include twelve-inch depth of AASHTO #1 stone; four-inch depth of 2A aggregate; six-inch depth of 25 mm BCBC Superpave, and depending upon proximity to or within the Borough road, a 1 1/2-inch depth of 9.5 mm Superpave shall be constructed.
 - [7] Trench restoration may include milling an eight-inch depth, two-to-four-foot width as determined by the township site inspector's inspection and placement of eight-inch depth of 25 mm BCBC Superpave, and depending upon the proximity to or within the Borough road, 1 1/2-inch depth of 9.5 mm Superpave shall be constructed.
- (3) Utility construction within the pavement of a Dalton Borough road either longitudinally or transversely or diagonally.
- (a) Saw-cut existing pavement to a width of at least two feet outside the diameter of the proposed underground utility line.
 - (b) Provide necessary work as per inspection in Subsection (d).
 - (c) After utility line placement, including the bedding material, the trench shall include:
 - [1] From the top of the bedding material the utility trench shall be backfilled with #57 (PennDOT 408) (depth will vary) to within 22 inches of the surface of the existing pave.
 - [2] After completion of the above AASHTO #57, construct a twelve-inch (compacted) depth of AASHTO #1 stone (PennDOT 408).
 - [3] After completion of the above AASHTO #1, construct a four-inch depth (compacted) of AASHTO #57 (PennDOT 408).
 - [4] After completion of the above AASHTO #57, construct a six-inch depth of 25 mm Superpave (PennDOT 408) to the surface of the existing Borough road pavement.
 - [5] Fill all potholes, broken places of the edge of pavements (both sides of road pavement) with 25 mm Superave (PennDOT 408).
 - [6] Construct 1 1/2-inch 9.5 mm Superpave (PennDOT 408) overlay of the Borough road, full width of the existing pavement, this paving shall be accomplished in one pass.
 - [7] Utility contractor shall be responsible for the lifting of all valve boxes, manhole lids and/or shutoffs.

- [8] Provide a twelve-inch seal of AC-20 asphalt at each joint with existing roadway pavement at the joint of the new pave with driveways at and around each valve box and manhole.
 - [9] Where Borough roads consist of gravel surface, the permanent restoration must consist of PennDOT 2A coarse aggregate, placed and compacted to the surface for the entire trench width and length.
 - [10] Temporary restoration must be placed during the months of December, January, February, March and must remain in place for a minimum of 20 days. The temporary restoration must consist of a minimum six-inch depth of 19 mm Superpave material. After the minimum twenty-day period (after April 20) but prior to May 1, the temporary restoration must be removed and the area saw-cut back one foot prior to the permanent restoration as per the permanent restoration detail. If plants are closed in December, January, February, and March, and no hot mix is available, the Borough could authorize the use of cold patch with a minimum depth of 10 inches. Should cold patch be used, the Borough Engineer's weekly inspection of said utility cuts may require the utility's representative to rehabilitate the "cut" as necessary as determined by Dalton Borough representatives. Fees for such inspections shall be as per § 294-16.
 - [11] Utilities to be constructed in, along, or across subdivision roads constructed as per the Dalton Borough Subdivision and Land Development Ordinance, Table VI-1 Design Standards for Streets.
 - [12] Temporary utility trench backfill shall be as specified in Subsection G.
 - [13] Section 294-18A(7) shall apply when applicable (multiple transverse road cuts or diagonal road cuts).
- (d) Upon completion of utility construction (either parallel with road or crossing road), utility representative shall contact Dalton Borough stating all utility installation has been completed. A Dalton Borough representative will perform a road inspection to determine damage(s) caused by aforesaid construction installation. Depending upon the outcome of the "after construction inspection of the Borough road," the Borough will determine what rehabilitation will be necessary. Rehabilitation could include the following:
- [1] One-inch depth scratch coat over either half or full width of road.
 - [2] Two-inch depth scratch coat over either half or full width of road.
 - [3] Mill half width of township road; repave with 1 1/2-inch depth of 9.5 mm depth Superpave.
 - [4] Overlay of full width of the subject township road (all pavement shall be PennDOT 408 Superpave, 9.5 mm wearing, 19.5 mm or 25

mm as determined during the township inspection).

[5] A two-foot width shoulder of 2A aggregate may be necessary.

(4) Small road cuts.

- (a) Small road cuts having a maximum size of four feet by four feet can be backfilled with 2A aggregate and tamped according to the above specifications to within eight inches of the pavement surface.
- (b) The remaining eight-inch depth to the surface of the existing pavement shall be filled with 19 mm Superpave in two lifts compacted and the surface sealed with driveway sealer.

(5) Driveways for single-family house construction.

- (a) During the process of obtaining a highway occupancy permit, a site meeting inspection shall be performed with the owner and a representative of Dalton Borough. A preconstruction video may be compiled for road conditions prior to construction.
- (b) An escrow amount shall be set forth by township resolution establishing fees for such account to cover cost of any road repair of the Borough road post driveway construction.
- (c) The homeowner requesting the highway occupancy permit and building permit shall sign the highway occupancy permit application and acknowledge his understanding of the escrow amount and conditions of the permit.
- (d) Should damage occur to a township road from the construction activities by heavy trucks, heavy equipment, or carelessness by contractors or owner, the signatory on the highway occupancy permit and building permit shall be responsible to Dalton Borough for restoration.
- (e) Restoration shall be as described in Subsection G(1), (2) and (7). The particular section and remedy to fix the township road shall be determined by Dalton Borough.

H. Work schedule.

- (1) All work involving cuts into the traveled portion of the road must be started within 90 days of permit issuance. All such work must be completed within 30 days of work commencement. Temporary repairs to any and all pavement and shoulder cuts shall be made immediately after completion of the work designated in the permit.
- (2) Restoration: permanent repairs to any and all pavement cuts shall be made within 10 days of completion of the work designated in the permit; permanent repairs to any and all shoulder cuts shall be made within 15 days of completion of the work designated in the permit.

I. Prohibited structures. No permit shall be issued for the construction, erection or placement in any road, whether such road is defined by right-of-way or such road

is owned in fee simple title by the Borough, of any building, fence, sign, mailboxes, columns, or other structure the Borough determines constitutes or will constitute a hazardous or dangerous condition to the use of the road or those which impair the safe or efficient use or maintenance of the road.

- J. Indemnification. The permittee shall fully indemnify, save and hold harmless and defend the Borough, its agents, representatives and employees, of and from all liability or claims of liability for damages or injury occurring to any person or persons or property through or as a consequence of any act or omission of or by permittee, any contractor, agent, servant, employee or person engaged or employed in, about, or upon the work, by, at the instance, or with the approval or consent of the permittee; from any failure of the permittee or any such person to comply with the permit or this article; and, for a period of five years after completion of the permitted work, from the failure of the Borough road, right-of-way, ditch or trench in the immediate area of, or impacted as a result of, the work performed under the permit where there is no similar failure of the road, right-of-way, ditch or trench beyond the area adjacent to the area of the permitted work.
- K. Permit validity. Permits are valid for a period of six months.
- L. Installation and costs. For new construction, the applicant shall install and pay the costs of any and all drainage pipes and other required improvements, and any and all restoration costs.
- M. Permit. A copy of the valid, issued, permit with the ordinance specifications shall be carried on site by the utility contractor performing the utility work. Permit shall be available for review by Dalton Borough representatives inspecting ongoing utility construction.
- N. Leaks. Leaks detected in a utility line reported to the utility by e-mail or registered letter including the location of the leak, road name, local physical property address, etc., shall be addressed (leak fixed, trench excavation restored, pavement restored, etc.) within seven days. If leak (area) is not repaired, the utility shall be responsible for whatever additional road restoration is necessary.

§ 294-18. Work completion; inspection.

- A. Notice.
 - (1) Thirty days prior to the start of construction as permitted, the utility contractor or permittee shall provide the construction schedule of contractor to the Borough, in writing, which schedule shall include the anticipated number of linear feet of construction per day to be accomplished.
 - (2) Permittee shall give written notice to the Borough within three business days following completion of the work authorized by permit.
 - (3) Permittee shall provide written notice to the Borough within three business days following completion of any required restoration of Borough roads and/or rights-of-way.
 - (4) The Borough shall give timely notice to all persons owning property abutting

on any road within the Borough about to be paved or improved and to all public utility companies operating in the Borough, and all such persons and utility companies shall make all water, gas or sewer connections, as well as any repairs thereto, which would necessitate excavation of said street within 30 days from the giving of such notice, unless such time is extended, in writing, for cause shown by the Borough. New paving shall not be opened or excavated for a period of five years after the completion thereof, except in the case of an emergency, the existence of which emergency and the necessity for the opening or excavation of such paving to be determined by the Borough. Any person who desires to excavate a street for a utility within five years after completion of the paving shall make written application to the Borough, and a permit for such opening shall be issued only after express approval of the Borough.

- (5) Any street or court that has received bituminous resurfacing (paving) within a five-year period shall be milled to a depth of 1.5 inches and resurfaced with appropriate material with (scratch leveling course) and (wearing course 1 1/2 inches) depth curb to curb and 10 feet beyond the farthest point of the pave cut edge in any direction by any person who shall open or excavate any street or court for any purposes; this includes emergency-related work. All restoration work shall be completed within and no later than 30 days from the day recorded for the excavation.
 - (6) Trenching excavations in lengths equal to the road surface width and in parallel or otherwise to the road surface shall have the same restoration requirements as for pave cuts above for the manner of completion.
 - (7) If two pave cuts are made less than 500 feet apart, the entire area between the two pave cuts, including the two pave cuts and 100 feet to each side of the pave cuts shall be milled and resurfaced as described above for a full width of the entire length of the work area.
 - (8) If, within five years after the restoration of the surface as herein provided, defects shall appear, the applicant shall reimburse the Borough for the cost of all necessary repairs to the permanent paving or, as directed by the Borough, may be required to reconstruct the road surface of the pave cut area to meet compliance.
 - (9) Pavement markings. Any person who shall open or excavate any street/court in the Borough shall thoroughly and completely replace all pavement markings to their preexisting condition within five days following the resurfacing of the street/court.
- B. Inspection. The Borough, through its designated representative, shall cause the work and, separately, all restoration to be inspected and when necessary, enforce compliance with conditions prescribed by the permit and this article employing, where necessary, professional expertise at the permittee's expense for said purpose. The Borough may reinspect the work authorized by the permit not more than five years after its completion, and if any settlement of the road surface or other defect shall appear in or caused by the work, contrary to the conditions, restrictions, standards and regulations of the Borough (or PennDOT, where applicable) or the

permit, the Borough may enforce compliance herewith. If the permittee fails to rectify any defect which presents an immediate or imminent safety or health problem within 48 hours and/or any other defect within 10 days of written notice from the Borough to do so, the Borough may cause the work to be performed and impose upon the permittee the cost thereof together plus an additional 20% of such cost to offset administrative costs. Moreover, the Borough may seek any and all remedies available to it under law or equity for any violation of this article.

§ 294-19. Maintenance.

The maintenance and repair of all work authorized by a permit shall remain the responsibility of the permittee. However, any drainage pipe or other required improvements installed in the Borough right-of-way shall become a part of the Borough infrastructure and shall thereafter be maintained by the Borough, provided such pipe and other improvements have been permitted, inspected and approved under the terms of this article.

§ 294-20. Vegetation and refuse.

- A. Shrubs and trees. The Borough, shrub, tree or other vegetation deemed to constitute a hazardous or dangerous condition to the use of the road or those which impair the use or maintenance of the road. No tree having a trunk diameter in excess of six inches shall be removed without notice of the proposed removal having first been given to the abutting property owner. Such notice shall be in a form prescribed by resolution of Dalton Borough Council.
- B. Wood. All logs, cordwood, branch wood or other forms of wood derived from the destruction or removal of any trees growing along any road shall be surrendered to and remain the property of the abutting property owners.
- C. Brush and refuse. The Borough may clear out brush and other refuse along the sides of any road to the width of the right-of-way. All clearing and removal of brush and refuse shall be confined to growth that is within the right-of-way and to the removal of branches that in any way interfere with public travel.
- D. Dangerous conditions. Nothing in this section shall prevent the Borough from removing roadside trees which may be thrown down by wind or lodged in a position as to become a nuisance to public travel or which, by reason of any other cause, may become a source of danger to the public.

§ 294-21. Obstructions and nuisances.

- A. General restriction. No person shall obstruct any road or commit any nuisance thereon by felling trees, making fences, turning the road, diverting water onto the road, filling, or in any other manner. Any such person who does not, upon notice by the Borough, immediately remove the obstruction or nuisance and repair the damage done to the road in accordance with Borough standards and requirements is in violation of this article.
- B. Mailboxes. Nothing in this article shall prohibit the placement of mailboxes in any Borough road right-of-way so long as the installation and specifications of said

mailbox comply in all respects with PennDOT standards and requirements. In such cases:

- (1) A permit shall not be required.
- (2) The mailbox and/or its support shall not create a public safety hazard or public nuisance, and the Borough shall have the authority to require the relocation or redesign of the mailbox and/or support to minimize hazards and nuisances.
- (3) The Borough shall not be responsible for any damage to or created by any mailbox and/or support.

§ 294-22. Drains and ditches.

- A. Maintenance. The Borough is hereby authorized to enter any lands or enclosures and cut, open, maintain and repair drains or ditches through the property when necessary to carry the water from the roads.
- B. Damage. Any person who damages, diverts or fills any drain or ditch without the authority of the Board of Supervisors is in violation of this article and is liable for the costs of restoring the drain or ditch.

§ 294-23. Violations and penalties.

- A. Fine. Any person, partnership or corporation who or which has violated or permitted the violation of any of the provisions of this article shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough, pay a judgment and all court costs, including attorney fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or be payable upon the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to governing law and the applicable rules of civil procedure. Each day that a violation continues unabated shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of this article shall be paid over to the Borough. No person, partnership or corporation who fails to pay a fee imposed for not obtaining a permit shall receive a permit until such time as all fees are paid up to date.
- B. Court of Common Pleas. The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.
- C. Other remedies. In addition to any penalty therein provided, any person, persons, firm, partnership or corporation who or which violates any provision of this article or who refuses to pay the costs of repair or removal as required by this article is subject to any and all applicable law or laws of the Commonwealth of Pennsylvania that afford(s) a remedy for such violation or recovery of costs in any court of the commonwealth, including but not limited to, monetary damages, equitable or injunctive relief and attorney's fees.

§ 294-24. Borough Engineer.

Dalton Borough Council appoints the Borough Engineer and/or the Engineer's designee to conduct inspections, make reports and administer other parts of this article as determined by Dalton Borough Council.

§ 294-25. Notice to violators.

- A. Service of notice. Whenever Dalton Borough Council or the Borough Engineer determines that a violation of this article exists, Dalton Borough Council and/or the Borough Engineer shall prepare a written notice to be served upon the owner and/or tenant of the premises on which the violation is located or originates, or the violator if other than a property owner or tenant. The written notice shall be served by one or more of the following methods:
- (1) Personal delivery.
 - (2) Fixing a copy to the door of the building on the premises of the violation.
 - (3) Certified mail to the last known address of the violator.
 - (4) Publishing in the Borough's official newspaper once each week for two consecutive weeks.
- B. Content of notice.
- (1) The notice shall enumerate the conditions which constitute the violation and what action is required to abate the violation.
 - (2) The notice shall include a time frame for the abatement of the violation, with such time frame established by Dalton Borough Council (or the Engineer, at Council's direction), based upon the nature of the violation and providing a reasonable period for the owner to take the required action. However, in no case shall the period for abatement of the violation exceed 60 days from the time notice is served upon the owner and, in certain cases, immediate correction may be required.

§ 294-26. Waivers and modifications.

- A. Intent. The provisions of this article are intended as minimum standards for the protection of the public health, safety, and welfare. If literal compliance with any mandatory provision of these regulations is demonstrated by the applicant to be patently unreasonable or to cause undue hardship as it applies to a particular property, or if the applicant shows that an alternative proposal will allow for equal or better results, the Borough may grant a waiver from any such mandatory provision(s) so that substantial justice may be done and the public interest secured while permitting the reasonable utilization of property. The granting of any waiver or modification pursuant to this section shall not have the effect of making null and void the intent and purpose of this article.
- B. Conditions. In granting waivers/modifications Dalton Borough Council may impose such conditions as will, in its judgment, secure substantially the objectives of the standards and requirements of this article.

- C. Procedure. All requests for waivers/modifications shall be in writing, shall accompany and be a part of the development application, and shall include:
- (1) The specific section(s) of this article in question.
 - (2) Provisions for the minimum modification necessary as an alternate to the requirements.
 - (3) Justification for the waiver/modification including the full grounds and facts of unreasonableness or hardship.
- D. Action. If Dalton Borough Council denies the request, the applicant shall be notified, in writing, of the reasons for denial. If the Borough grants the request, the permit shall include a note which identifies the waiver/modification as granted. In any case, the Borough shall keep written records of all actions on all requests for waivers/modifications as required by law.

§ 294-27. Severability.

Should any section, subsection, clause, provision or other portion of this article be declared invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this article; Dalton Borough Council having adopted this article as if such portions had not been included therein.

§ 294-28. Repealer.

All other existing ordinances or parts thereof inconsistent with this article are hereby expressly repealed to the extent necessary to give this article full force and effect.

§ 294-29. Conflicts.

Should any provision of this article be in conflict with any other section, provision, regulation or standard of any other Borough ordinance, the more restrictive shall apply.

§ 294-30. Effective date.

This article shall become effective immediately upon adoption.

Chapter 300

SUBDIVISION AND LAND DEVELOPMENT

GENERAL REFERENCES

Comprehensive Plan — See Ch. 166.

Soil erosion and sediment control — See Ch. 286.

Floodplain management — See Ch. 197.

Stormwater management — See Ch. 292.

Sewers — See Ch. 282.

Zoning — See Ch. 400.

ARTICLE I
General Provisions

§ 300-1. Repealer and conflict.

This Subdivision and Land Development Ordinance, as adopted herein and as may be duly amended by the Borough Council, shall repeal and replace in total the Borough of Dalton Subdivision and Land Development Ordinance of 1988, as amended; provided, however, that the repeal shall in no manner be construed as a waiver, release or relinquishment of the right to initiate, pursue or prosecute, as the case may be, any proceedings pertaining to any violation of the aforesaid ordinances or any applicable predecessor ordinances and regulations, and all provisions of the said repealed ordinances shall remain in full force and effect and are not repealed hereby as the said sections pertain to any such violation. This chapter is not intended to and shall not be construed to affect or repeal any other ordinance, code or regulation of the Borough. If any other ordinance, code or regulation of the Borough is in conflict or inconsistent with the requirements of this chapter, the most restrictive standards and provisions shall apply.

§ 300-2. Title and short title.

An ordinance governing subdivisions and land developments within the limits of the Borough of Dalton and providing application procedures, design standards and maintenance requirements for improvements, and prescribing penalties for violations. This chapter shall be known and may be cited as the "Borough of Dalton Subdivision and Land Development Ordinance."

§ 300-3. Jurisdiction.

A. Application. This chapter shall apply to all subdivisions and land developments in the Borough proposed after the effective date of this chapter.

- (1) No subdivision or land development of any lot, tract or parcel of land shall be made, and no street, sanitary sewer, storm sewer, water main or other improvements in connection therewith shall be laid out, constructed, opened or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with the provisions of this chapter.
- (2) No lot in a subdivision may be sold, no permit to erect or alter any building upon land in a subdivision or a land development may be issued, and no building may be erected in a subdivision or a land development, unless and until a plan of such subdivision or land development shall have been approved and properly recorded, and until the improvements required herein in connection therewith have been constructed or guaranteed as hereinafter provided.
- (3) No person, firm or corporation proposing to make, or having made, a subdivision or land development within the Borough shall proceed with any grading before obtaining from Borough Council the approval of the preliminary plan of the proposed development, and no deeds shall be recorded

for lots in any development, before obtaining from Borough Council the approval of the final plan of the proposed subdivision or land development, except as otherwise provided herein.

- (4) The proposed subdivision or land development plat shall be in general accordance with the Borough Comprehensive Plan.
- B. Powers. The Borough shall have all powers necessary to administer the provisions of this chapter without limitation by reason of enumeration, including the following:
- (1) To prohibit the development of any land found to be unsuitable as defined by this chapter.
 - (2) To require that improvements to the land be made as defined by this chapter.
 - (3) To require the payment of recreation fees as a condition of subdivision or land development plan approval.
 - (4) To require adherence to this chapter and its standards.
 - (5) To require complete and accurate preliminary and final subdivision and land development submissions and additional information necessary to make reasonable evaluations of such plans.
 - (6) To make conditional approvals where requirements specified in writing by the Borough will satisfactorily protect the public interest and health and will not violate state laws and will accomplish the purpose of this chapter.
- C. Recording of plans. In accord with § 513 of the Pennsylvania Municipalities Planning Code, the Recorder of Deeds of the County shall not accept any subdivision or land development map or plan for recording unless such map or plan officially notes the approval of Borough Council.

§ 300-4. Purpose.

This chapter has been adopted to protect and promote the health, safety and general welfare of the citizens of the Borough by establishing regulations to allow for the proper and controlled development of the Borough, to provide for environmental protection and to ensure the proper provision of community facilities. Regulations for specific types of development for which additional standards have been deemed necessary are intended to protect the rights of the residents of the Borough to enjoy clean air, pure water, and the natural, scenic, historic and aesthetic value of the environment, and in particular to preserve and conserve the rural and natural features of the Borough. The basic tenet of subdivision and land development in the Borough is basing design on land capability and encouraging flexibility of design via the conservation subdivision design process.

§ 300-5. Interpretation.

In interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, morals and the general welfare of the Borough and its citizens. It is not intended to interfere with or abrogate or annul other rules, regulations or ordinances of the Borough except that,

where this chapter imposes a more stringent or greater requirement on the development of land or structure, or requires larger open spaces than are imposed by such other rules, regulations or ordinances, the provisions of this chapter shall control.

§ 300-6. Effect of ordinance changes.

Changes in this chapter shall affect plats as follows:

- A. Pending action. From the time an application for approval of a plat, whether preliminary or final, is duly filed as provided in this chapter, and while such application is pending approval or disapproval, no change or amendment of the Borough subdivision or other governing ordinance or plan shall affect the decision on such application adversely to the applicant, and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed. In addition, when a preliminary application has been duly approved, the applicant shall be entitled to final approval in accordance with the terms of the approved preliminary application as hereinafter provided. However, if an application is properly and finally denied, any subsequent application shall be subject to the intervening change in governing regulations.
- B. Project completion and effect of litigation. When an application for approval of a plat, whether preliminary or final, has been approved under the terms of this chapter without conditions or approved by the applicant's acceptance of conditions, no subsequent change or amendment in the subdivision or other governing ordinance or plan shall be applied to affect adversely the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within five years from such approval. The five-year period shall be extended for the duration of any litigation, including appeals, which prevent the commencement or completion of the development, and for the duration of any sewer or utility moratorium or prohibition which was imposed subsequent to the filing of an application for preliminary approval of a plat. In the event of an appeal filed by any party from the approval or disapproval of a plat, the five-year period shall be extended by the total time from the date the appeal was filed until a final order in such matter has been entered and all appeals have been concluded and any period for filing appeals or requests for reconsideration have expired. Provided, however, no extension shall be based upon any water or sewer moratorium which was in effect as of the date of the filing of a preliminary application.
- C. Five-year initiation. Where final approval is preceded by preliminary approval, the aforesaid five-year period shall be counted from the date of the preliminary approval. In the case of any doubt as to the terms of a preliminary approval, the terms shall be construed in the light of the provisions of the governing ordinances or plans as they stood at the time the application for such approval was duly filed.
- D. Substantially completed improvements. Where the landowner has substantially completed the required improvements as depicted upon the final plat within the aforesaid five-year limit, or any extension thereof as may be granted by Borough Council, no change of municipal ordinance or plan enacted subsequent to the date of filing of the preliminary plat shall modify or revoke any aspect of the approved final plat pertaining to density, lot, building, street or utility location.

- E. More than five years. In the case of a preliminary plat calling for the installation of improvements beyond the five-year period, a schedule shall be filed by the landowner with the preliminary plat, delineating all proposed sections as well as deadlines within which applications for final plat approval of each section are intended to be filed. Such schedule shall be updated annually by the applicant on or before the anniversary of the preliminary plat approval, until final plat approval of the final section has been granted, and any modification in the aforesaid schedule shall be subject to approval of Borough Council in its discretion.
- F. Sections. Each section in any residential subdivision or land development, except for the last section, shall contain a minimum of 25% of the total number of dwelling units as depicted on the preliminary plan, unless a lesser percentage is approved by Borough Council in its discretion. Provided the landowner has not defaulted with regard to or violated any of the conditions of the preliminary plat approval, including compliance with landowner's aforesaid schedule of submission of final plats for the various sections, then the aforesaid protections afforded by substantially completing the improvements depicted upon the final plat within five years shall apply, and for any section or sections beyond the initial section in which the required improvements have not been substantially completed within said five-year period, the aforesaid protections shall apply for an additional term or terms of three years from the date of final plat approval for each section.
- G. Landowner failure. Failure of landowner to adhere to the aforesaid schedule of submission of final plats for the various sections shall subject any such section to any and all changes in subdivision and other governing ordinance enacted by the Borough subsequent to the date of the initial preliminary plan submission.

ARTICLE II Definitions

§ 300-7. Tense, gender and number.

Words in the present tense include the future tense; words used in the masculine gender include the feminine and the neuter; words in the singular include the plural, and those in the plural include the singular.

§ 300-8. General terms.

- A. The word "applicant," "developer," "person," "subdivider" or "owner" includes a corporation, unincorporated association and a partnership, or other legal entity, as well as an individual.
- B. The word "street" includes thoroughfare, avenue, boulevard, court, expressway, highway, lane, arterial, and road.
- C. The word "building" includes structures and shall be construed as if followed by the phrase "or part thereof."
- D. The term "occupied or used." as applied to any building, shall be construed as though followed by the words "or intended, arranged, or designed to be occupied or used."
- E. The word "lot" includes plot, parcel, tract, site, or any other similar term.
- F. The word "watercourse" includes channel, creek, ditch, drain, dry run, river, spring, and stream.
- G. The word "about" shall include the words "directly across from."
- H. The words "should" and "may" are permissive.
- I. The words "must," "shall" and "will" are mandatory and directive.

§ 300-9. Terms or words not defined.

When terms, phrases or words are not defined herein, they shall have the meanings as defined in The Latest Illustrated Book of Development Definitions (H.S. Moskowitz and C.G. Lindbloom, Rutgers, the State University of New Jersey, 2004) or, if not defined therein, they shall have their ordinarily accepted meanings or such as the context may imply.

§ 300-10. Specific terms.

Terms or words used herein, unless otherwise expressly stated, shall have the following meanings:

ACCESS DRIVE, PRIVATE — A type of drive permitted by this chapter to serve a residential lot which does not have frontage on a public or approved private road.

ACCESSORY USE OR STRUCTURE — A use of land or of a structure or portion thereof incidental and subordinate to the principal use of the land or building and located

on the same lot with such principal use. A portion of a principal building used for an accessory use shall not be considered an accessory structure.

ADD-ON SUBDIVISION — See "lot improvement subdivision."

ALLEY — A minor right-of-way, privately or publicly owned, primarily for service access to the rear or sides of properties.

ALTERATIONS — As applied to a building or structure, means any change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

APPLICANT — A landowner or developer, as hereinafter defined, who has filed an application for a subdivision or land development, including his heirs, successors and assigns.

APPLICATION — Every application, whether preliminary or final, required to be filed and approved prior to start of construction or development, including but not limited to an application for a building permit, for the approval of a subdivision plat or plan or for the approval of a development plan.

BLOCK — A tract of land, a lot or groups of lots, bounded by streets, public parks, watercourses, boundary lines of the Borough, unsubdivided land or by any combination of the above.

BOROUGH — The Borough of Dalton, Lackawanna County, Pennsylvania.

BOROUGH COUNCIL — The Borough Council of the Borough of Dalton, Lackawanna County, Pennsylvania.

BUFFER — A strip of land that separates one use from another use or feature and is not occupied by any building, parking, outdoor storage or any use other than open space or approved pedestrian pathways. It is used to provide separation between incompatible uses to effect a visual barrier, reduce noise, block physical passage between uses, and reduce noise, dust and litter. The separation may be effected by fencing, dense vegetative planting, the provision of additional setback distances, berms or a combination thereof; and, in general, widths of buffers are increased as the density or opaqueness of the barrier decreases. A buffer yard may be a part of the minimum setback distance, but land within an existing street right-of-way shall not be used to meet a buffer yard requirement.

BUILDING — Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, services, goods or materials of any kind or nature.

BUILDING COVERAGE — The percentage of the area of the lot covered or occupied by the total horizontal projected surface area of all buildings on the lot and including accessory buildings and structures (including covered porches, carports and breezeways, but excluding open and uncovered patios and decks).

BUILDING ENVELOPE — An area on a lot which has been designated as the area in which development may occur. Building envelopes are identified by building setbacks, conservation areas, site conditions and other factors, and shall be specifically designated on the development plan and established by deed covenants and restrictions.

BUILDING HEIGHT — The vertical distance of a building measured from the average

ground level to the highest part of the structure, excluding chimneys.

BUILDING, PRINCIPAL — A building or buildings in which is conducted the main or principal use of the lot on which said building is situated.

CALIPER — The diameter of a tree's trunk measured 12 inches above the ground.

CAMPGROUND or RECREATIONAL VEHICLE PARK — A tract of land, or any portion thereof, used to provide sites for the temporary use of tents or recreational vehicles, as hereinafter defined, for camping purposes, with or without a charge for the leasing, renting or occupancy of such space. All campgrounds and recreational vehicle parks shall be considered a recreational subdivision or land development.

CAMPSITE — A lot within a recreational vehicle park or campground to be used for camping purposes, and acting as a site for travel trailers, truck campers, camper trailers, motor homes, or tents, marked by the developer on a plan as a numbered, lettered or otherwise identified tract of land.

CARTWAY (ROADWAY) — The portion of a street right-of-way, paved or unpaved, intended for vehicular use, including the travelway and shoulders.

CLEAR SIGHT TRIANGLE — An area of unobstructed vision at a street intersection(s), defined by lines of sight between points at a given distance from the intersecting street right-of-way lines.

COMMERCIAL BUILDING — A building which houses a commercial use.

COMMERCIAL USE — Any use of land involving an occupation, employment or enterprise that is carried on for profit by the owner, lessee or licensee.

COMMISSION or PLANNING COMMISSION — The Borough of Dalton Planning Commission.

COMMON AREA — All of the real property and improvements dedicated for the common use and enjoyment of the residents of a particular development, including, but not limited to, open land, development improvements, common facilities, and recreation area.

COMMON FACILITIES — Improvements in a development that are not required by the Borough but have been constructed as part of a development for the common use and enjoyment of the residents of that development, including, but not limited to, community centers, recreation buildings and structures, and administrative and maintenance buildings.

COMMON OPEN SPACE — A parcel or parcels of land or an area of water, or a combination of land and water within a development site designed and intended for the use and enjoyment of residents of a development, not including streets, off-street parking areas, and areas set aside for public or community facilities.

COMPREHENSIVE PLAN — The complete plan or any part of the plan for the development of the Borough of Dalton adopted in accordance with the MPC.

CONSERVATION AREA, PRIMARY — Those areas of a development tract which are comprised of environmentally sensitive lands on which development is not permitted.

CONSERVATION AREA, SECONDARY — Those areas of a development tract which are somewhat less sensitive than primary conservation areas and which may be critical

to the effect the development will have on both the natural environment and the rural character of the community.

CONSERVATION EASEMENT — A right or interest in land granted primarily for the preservation of the land in its undeveloped state but which may allow limited development (e.g., a residential structure) and other compatible uses such as agriculture and forestry.

CONSERVATION OPEN SPACE — That part of a particular conservation design subdivision development tract set aside for the protection of sensitive natural features, farmland, scenic views and other primary and secondary conservation areas identified by this chapter. Conservation open space may be accessible to the residents of the development and/or the Borough, or it may contain areas of farmland or forest land which are not accessible to project residents or the public.

COUNCIL — The Borough Council of the Borough of Dalton, Lackawanna County, Pennsylvania.

COUNTY — The County of Lackawanna, Commonwealth of Pennsylvania.

CROSSWALK OR INTERIOR WALK — A right-of-way or easement for pedestrian travel across or within a block.

CUL-DE-SAC — A minor street having one end open to traffic and being permanently terminated at the other end by a vehicular turnaround.

DEAD-END STREET — A street or portion of a street with only one vehicular outlet but which has a temporary turnaround and which is designed to be continued when adjacent open land is subdivided.

DEDICATION — The deliberate appropriation of land by its owner for any general and public use, reserving to himself no other rights than those that are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.

DEVELOPER — Any landowner, agent of such landowner or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

DEVELOPMENT IMPROVEMENTS — See "improvements."

DIAMETER AT BREAST HEIGHT (DBH) — The diameter of a tree trunk measured at 4.5 feet above the ground.

DISTURBED AREA — Any area of land which has been altered so that the surface of the soil has physically been graded, excavated or otherwise exposed.

DOUBLE FRONTAGE LOT — A lot extending between and having frontage on a major traffic street and a minor street, and with vehicular access solely from the latter.

DRAINAGE FACILITY — Any ditch, gutter, pipe, culvert, storm sewer or other structure designed, intended or constructed for the purpose of diverting surface waters from or carrying surface waters off streets, public rights-of-way, parks, recreational areas, or any part of any subdivision, land development, or contiguous land areas.

DRIVEWAY — A privately owned and constructed vehicular access from an approved private or public road into a lot or parcel having frontage on the said road.

DWELLING — A structure or portion thereof which is used exclusively for human

habitation.

DWELLING, MULTIFAMILY — (See also "multifamily project.") A building or buildings designed for occupancy by three or more families living independently of each other in separate dwelling units. The term "multifamily dwelling" shall include condominium as well as noncondominium housing units, including the following construction types:

- A. **RESIDENTIAL CONVERSION TO APARTMENTS** — Conversion of an existing single-family detached dwelling, having been used as such for 10 or more years, into three to five dwelling units and not exceeding 2 1/2 stories in height.
- B. **GARDEN APARTMENT** — Multifamily dwelling originally designed as such, containing three or more dwelling units and not exceeding 2 1/2 stories in height; not including townhouses.
- C. **TOWNHOUSE** — Multifamily dwelling of three or more dwelling units of no more than 2 1/2 stories in height in which each unit has its own front and rear accesses to the outside, no unit is located over another unit and each unit is separated from any other unit by one or more common fire-resistant walls.
- D. **MEDIUM HIGH-RISE APARTMENT** — Multifamily dwellings of more than 2 1/2 stories but not exceeding the height limitations (in feet) of this chapter.
- E. **MOBILE HOME** — A transportable, single-family dwelling intended for permanent occupancy, office or place of assembly, contained in one unit or in two units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation, and which is subject to United States Department of Housing and Urban Development regulations.

DWELLING, SINGLE-FAMILY — A detached dwelling unit accommodating one family, but excluding mobile homes as defined in this chapter.

DWELLING, TWO-FAMILY — Dwelling accommodating two families, either with units which are attached side by side through the use of a party wall, and having one side yard adjacent to each dwelling unit, or upstairs/downstairs units. (See also "multifamily project" for two-family dwellings in a multifamily project.)

DWELLING UNIT — One or more rooms in a dwelling structure, including a kitchen, sleeping facilities, bath and toilet, designed as a household unit for extended periods of occupancy for living and sleeping purposes by not more than one family at a time.

EASEMENT — A right-of-way granted, but not dedicated, for limited use of private land for a public or quasi-public purpose, within which the lessee or owner of the property shall not erect any permanent structure.

ENGINEER — A professional engineer licensed as such in the Commonwealth of Pennsylvania.

ENGINEER, BOROUGH — A professional engineer licensed as such in the Commonwealth of Pennsylvania, duly appointed as the Engineer for the Borough and/or Planning Commission.

FLOODPLAIN — A relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse and/or any area subject to the unusual and rapid accumulation of surface waters from any source.

IMPERVIOUS SURFACE — Area covered by roofs, concrete, asphalt or other man-made cover which has a coefficient of runoff of 0.7 or higher. The Borough Engineer shall decide any dispute over whether an area is impervious. Areas of land paved for the sole purpose of noncommercial tennis courts, trails or basketball courts or closely similar active outdoor recreation may be deleted from impervious surfaces for the purposes of determining permitted impervious coverage, unless those areas would also be used for nonrecreational uses (such as parking).

IMPROVEMENT — For the purpose of classification as a land development as defined in this Article II, a physical addition or change to the land that may be necessary to make the land suitable for the proposed use or extension of use, including but not limited to buildings, structures, additions to buildings and structures, roads, driveways, parking areas, sidewalks, stormwater controls and drainage facilities, landscaped areas, utilities, water supplies and sewage disposal systems, and any work involved with highway reconstruction.

INDUSTRIAL BUILDING — A building which houses an industrial use.

INDUSTRIAL USE — Any commercial use engaged in the basic mechanical, chemical or other transformation of extracted or raw materials or substances into new products or materials, including, but not limited to, the assembly of component parts, the manufacturing or transformation of products for use by other manufacturers, the blending of materials such as lubricating oils, plastics, resins or liquors, or other basic production processes; or any commercial use producing products predominately from previously prepared materials, finished products and parts, including, but not limited to, research, engineering or testing laboratories, assembly from components, fabrication of products, textile and clothing manufacturing, warehousing, distribution centers, furniture or other wood products production and the like.

INSTITUTIONAL BUILDING — A building which houses an institutional use.

INSTITUTIONAL USE — Any use of land owned and operated by a government body or agency, including, for example, public schools, parks, civic centers, municipal buildings, solid waste disposal facilities, nursing homes and hospitals; or uses operated by nonprofit, community-based organizations for the general use of the public, including, for example, churches, fire houses, ambulance buildings, libraries, nursing homes, hospitals, sanitariums and clinics.

LAND DEVELOPMENT —

- A. A subdivision of land;
- B. The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
 - (1) A group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
 - (2) The division or allocation of land or space, whether initially or cumulatively,

between or among two or more existing or prospective occupants by means of, or for the purpose of, streets, common areas, leaseholds, condominiums, building groups or other features.

- C. The definition of land development shall also include the expansion or addition to a nonresidential building which involves any of the following as measured cumulatively from the effective date of this provision:
- (1) The addition of 25% or more of floor area to the structure; or
 - (2) The increase by 25% or more of impervious surface (including building area) on the parcel; or
 - (3) Any increase in impervious area which will result in the generation of stormwater in such volume as will not be controlled by existing stormwater facilities pursuant to the requirements of this chapter.
- D. The definition of land development shall not include the following:
- (1) The conversion of an existing single-family detached dwelling or single-family semidetached dwelling into not more than three residential units, unless such units are intended to be a condominium;
 - (2) The addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building.

LANDOWNER — The legal or beneficial owner or owners of land, including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), or a lessee, if he is authorized under the lease to exercise the rights of the landowner or other persons having a proprietary interest in the land.

LOT — A designated parcel, tract or area of land, regardless of size, established by a plat or other legal means, and intended for transfer of ownership, use, lease or improvements or for development, regardless of how or if it is conveyed.

LOT AREA — The total number of square feet in the lot less any area included in any public or private road rights-of-way affecting the lot. In the case of a flag lot, the lot area shall not include the access corridor.

LOT, CORNER — A lot situated at and abutting the intersection of two streets having an interior angle of intersection not greater than 135°.

LOT COVERAGE — That portion or percentage of the lot area which is covered by buildings; paved and unpaved walkways, roads, driveways and parking areas; pavement; or other impervious surfaces.

LOT DEPTH — The average horizontal distance between the front lot line and the rear lot line. In the case of a flag lot, the depth measurement shall not include the access corridor but shall be made on the main portion of the lot.

LOT, DOUBLE FRONTAGE — A lot extending between and having frontage on a major traffic street and a minor street, and with vehicular access solely from the latter.

LOT, EXISTING OF RECORD — Any lot or parcel of property which was legally in existence and properly on file with the Lackawanna County Recorder of Deeds prior to the effective date of the original Borough Zoning Ordinance.

LOT, FLAG OR PANHANDLE — A lot with access to the bulk of the lot provided by a narrow corridor from the adjoining public road.

LOT IMPROVEMENT SUBDIVISION — (Also known as "add-on subdivision.") The realignment of lot lines or the transfer of land to increase the size of an existing lot, provided the grantor's remaining parcel complies with all provisions of this chapter and no new lots are created; or the combination or re-allotment of small lots into a larger lot or lots.

LOT LINE, FRONT — The line separating the lot from any street. In the case of a flag lot, the lot line where the narrow access corridor widens shall be considered the front lot line.

LOT LINE, REAR — The lot line most distant from and most parallel to the front lot line.

LOT LINE, SIDE — Any lot line other than a front or rear lot line.

LOT WIDTH — The horizontal distance between the side lot lines measured at the minimum prescribed front yard setback line, unless otherwise stated or as may be specified in this chapter. In the event of a curved lot line, such lot width at the minimum prescribed front yard setback line shall be measured along the curve. Where buildings are permitted to be attached, the lot width shall be measured from the center of the party wall. Where a pie-shaped lot fronts upon a cul-de-sac, the minimum lot width may be reduced to 75% of the width that would otherwise be required. In the case of flag lots, the width measurement shall not include the access corridor but shall be made on the main portion of the lot.

MEDIATION — A voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement which the parties themselves create and consider acceptable.

MINIMIZE — To reduce to the smallest amount possible. "Minimize" does not mean to eliminate but rather that the most substantial efforts possible under the circumstances have been taken to reduce the adverse effect of the action (such as grading, clearing, construction, etc.).

MOBILE HOME — A transportable, single-family dwelling intended for permanent occupancy, office or place of assembly, contained in one unit or in two units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations and constructed so that it may be used without a permanent foundation, and which is subject to United States Department of Housing and Urban Development regulations.

MOBILE HOME LOT — A parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenances necessary for the erection thereon of a single mobile home as defined by this chapter.

MOBILE HOME PARK — A parcel or contiguous parcels of land which has been so designated and improved that it contains two or more mobile home lots for the placement thereon of mobile homes as defined by this chapter.

MPC — The Pennsylvania Municipalities Planning Code.⁶⁵

MULTIFAMILY PROJECT — Any development of a single parcel of property that includes one or more buildings containing three or more dwelling units. Any residential development which proposes the construction of two or more two-family dwellings on one parcel of property shall also be considered a multifamily project. Two-family dwellings in a multifamily project shall be considered townhouses.

MUNICIPALITY — The Borough of Dalton, Lackawanna County, Pennsylvania.

NONRESIDENTIAL BUILDING — A building which houses a nonresidential use.

NONRESIDENTIAL USE — Any commercial, industrial or institutional use of land, or any other use of land which is not for residential purposes, but excluding agricultural uses.

OPEN LAND or OPEN SPACE — That part of a particular development tract set aside for the protection of sensitive natural features, farmland, scenic views and other primary and secondary conservation areas identified by this chapter. Open land may be accessible to the residents of the development and/or the Borough or it may contain areas of farmland, forest land or conservancy lots which are not accessible to project residents or the public.

PA DEP — The Pennsylvania Department of Environmental Protection.

PennDOT — The Pennsylvania Department of Transportation.

PERFORMANCE GUARANTEE — A written instrument which may be accepted by the Borough Council in lieu of a requirement that certain improvements be made by a developer before the final plan is granted final approval and released for recording, which shall provide for the deposit with the Borough of financial security in an amount sufficient to cover the costs of any improvements or common amenities, including, but not limited to, roads, sanitary sewage facilities, water supply and distribution facilities, stormwater detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements and buffer or screen planting which may be required.

PLAN or PLAT — A map or drawing indicating the subdivision or resubdivision of land or a land development in its various stages of preparation, including the following:

- A. **SKETCH PLAN** — An informal plan, identified as such with the title "sketch plan" on the map, indicating salient existing features of a tract and its surroundings and the general layout of the proposal to be used as a basis for consideration by the Borough. This plan is drawn on tracing paper or similar material enabling municipal officials to see the relationship between the proposed layout and the property's features as identified on the Existing Resources and Site Analysis Map.
- B. **PRELIMINARY PLAN** — A complete plan identified as such with the wording "preliminary plan" in the title accurately showing proposed streets and lot layout and such other information as required by this chapter, such plan prepared by a qualified professional (see definition of "qualified professional").
- C. **FINAL PLAN** — A complete and exact plan identified as such with the wording "final plan" in the title, with a qualified professional's seal (see definition of "qualified professional") affixed and prepared for official recording as required by

this chapter to define property rights, proposed streets and other improvements.

- D. **RECORD PLAN** — The copy of the final plan which contains the original endorsements of the Borough Council and which is intended to be recorded with the County Recorder of Deeds.

PLANNING COMMISSION — The Planning Commission of the Borough of Dalton, Lackawanna County, Pennsylvania.

POSITIVE DRAINAGE — Sufficient slope to drain surface water away from buildings without ponding.

PRIMITIVE-TYPE CAMPING FACILITY — An overnight camping facility with no improvements beyond those required by law; no permanent structures other than tent platforms, privies and maintenance buildings; and designed and restricted to accommodate only persons using tents or similar apparatus, not including any vehicle on wheels.

PUBLIC HEARING — A formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment prior to taking action in accordance with this chapter and the MPC.

PUBLIC MEETING — A forum held pursuant to notice under the Sunshine Act, 65 Pa.C.S.A. § 701 et seq. (October 15, 1978, P.L. 729, No. 93).⁶⁶

PUBLIC NOTICE — Notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing.

QUALIFIED PROFESSIONAL — An individual authorized to prepare plans pursuant to § 503(1) of the MPC, which states that plats and surveys shall be prepared in accordance with the Act of May 23, 1945 (P.L. 913, No. 367), known as the "Engineer, Land Surveyor and Geologist Registration Law," except that this requirement shall not preclude the preparation of a plat in accordance with the Act of January 24, 1966 (P.L. 1527, No. 535), known as the "Landscape Architects Registration Law," when it is appropriate to prepare the plat using professional services as set forth in the definition of the "practice of landscape architecture" under Section 2 of that act.

RECREATIONAL SUBDIVISION OR LAND DEVELOPMENT — The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts or parcels of land involving changes in existing lot lines for the purpose, whether immediate or future, of lease, rent, sale or transportation of ownership to provide a site for occupancy by travel trailers, truck campers, camper trailers, motor homes or tents for transient use, whether or not a fee is charged. Campgrounds, RV parks, primitive camping grounds and other similar facilities shall fall under this definition.

RECREATIONAL VEHICLE — A vehicular type of unit initially designed as temporary living quarters for recreational camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic types of recreational vehicles are:

66. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- A. CAMPER TRAILER — A vehicular unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the campsite.
- B. MOTOR HOME — A vehicular unit built on a self-propelled motor vehicle chassis.
- C. TRAVEL TRAILER — A vehicular unit, mounted on wheels, of such size (no more than 500 square feet) and weight as not to require a special highway movement permit when drawn by a motorized vehicle.
- D. TRUCK CAMPER — A portable unit, designed to be loaded onto or affixed to the bed or chassis of a truck.
- E. SELF-CONTAINED UNIT — A unit which:
 - (1) Can operate without connections to external sewer, water and electrical systems; and
 - (2) Has a toilet and holding tank for liquid waste; and
 - (3) Contains water storage facilities and may contain a lavatory, kitchen sink and/or bath facilities connected to the holding tank.

RESERVE STRIP — A parcel of ground in separate ownership, separating a street from other adjacent properties or from another street.

RESUBDIVISION — Any revision, replatting or resubdivision of land which includes changes to a recorded plan.

REVERSE FRONTAGE LOTS — Lots which front on one street and back on another with vehicular access solely from one street.

RIGHT-OF-WAY — The total width of any land reserved or dedicated as a street, drainageway or for other public or semipublic purposes.

RUNOFF — That portion of rainfall or snowmelt which does not enter the soil but moves off the surface.

SETBACK — An open unoccupied space which shall extend the full depth or width of a lot and which shall not be occupied by any building. Front setbacks shall be measured from the edge of the road right-of-way and other setbacks from property lines perpendicular to the road/property line to the nearest point of the structure.

SEWAGE DISPOSAL, BOROUGH SYSTEM — The sanitary sewage collection and treatment system owned and operated by the Borough.

SEWAGE DISPOSAL, CENTRAL — A sanitary sewage collection and treatment system meeting the requirements of the Pennsylvania Department of Environmental Protection, in which sewage is carried from individual lots or dwelling units by a system of pipes to a central treatment and disposal facility or system, which may be publicly or privately owned and operated, including sewage treatment plants, land application systems, and community sewage disposal systems. A system designed to serve a two-family dwelling or two dwelling units located on the same property or adjacent properties shall not be considered as central sewerage for unit density determination; and in such a case all development standards, including, but not limited to, unit densities, will apply the same for each dwelling or unit as any single-family unit.

SEWAGE DISPOSAL, COMMUNITY — A sanitary sewage collection and treatment system meeting the requirements of the Pennsylvania Department of Environmental Protection, in which sewage is carried from individual lots or dwelling units by a system of pipes to a central treatment and disposal facility, or a system which may be publicly or privately owned and operated, and which is used to treat and dispose of domestic sewage into the soil (whether entirely in-ground or partially elevated) in accord with DEP rules and regulations.

SEWAGE DISPOSAL, INDIVIDUAL SYSTEM ON CONSERVATION LAND — Any sewage disposal system (whether subsurface or aboveground) used to treat and dispose of domestic sewage into the soil for an individual dwelling lot in accord with Pennsylvania Department of Environmental Protection rules and regulations, where the system is located on adjacent conservation land via a use and access easement.

SEWAGE DISPOSAL, ON-SITE — Any sewage disposal system (whether subsurface or aboveground) used to treat and dispose of domestic sewage into the soil on an individual lot in accord with Pennsylvania Department of Environmental Protection Rules and Regulations.

SEWAGE TREATMENT PLANT — A sanitary sewage collection and treatment system meeting the requirements of the Pennsylvania Department of Environmental Protection, in which sewage is carried from individual lots or dwelling units by a system of pipes to a central treatment and disposal facility or system, which may be publicly or privately owned and operated, and which uses mechanical, biological and chemical processes to treat and dispose of domestic sewage in accord with DEP rules and regulations involving an effluent discharge to surface waters.

SEWER CONNECTION (as used in Article VII) — All pipes, fittings and appurtenances from the drain outlet of the mobile home to the inlet of the corresponding sewer riser pipe.

SEWER RISER PIPE (as used in Article VII) — That portion of the sewer lateral which extends vertically to the ground elevation and terminates at each mobile home lot.

SHOULDER — The improved portion of a street immediately adjoining the travelway.

SIGHT DISTANCE — The required length of roadway visible to the driver of a passenger vehicle at any given point on the roadway when the view is unobstructed by traffic.

SPECIMEN TREE — Any tree with a caliper that is 12 inches or more in diameter at breast height or is of exceptional character as determined by the Borough.

STREET — A strip of land, including the entire right-of-way, whether public or private, designed to provide access by vehicular traffic or pedestrians.

- A. **COLLECTOR STREET** — Provides access to abutting properties, intercepts minor streets and provides routes for considerable volume of traffic to community facilities and major streets and serves more than 200 dwelling units or more.
- B. **MINOR STREET** — Provides access to abutting properties and serves 26 to 200 dwelling units.
- C. **COUNTRY LANE** — Provides access to abutting properties and serves not more than 25 dwelling units.

- D. **MINIMUM ACCESS STREET** — Provides access to abutting properties and serves not more than three dwelling units. See § 300-40H.

SUBDIVIDER — See "developer."

SUBDIVISION — The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land, including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development; provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than 10 acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

- A. **MINOR SUBDIVISION** — A subdivision that creates five lots or less or the cumulative development on a lot-by-lot basis for a total of five lots or less of any original tract of record (i.e., not subdivided or developed subsequent to the effective date of the original Borough Subdivision Ordinance), and which does not require the construction or extension of any streets or municipal facilities and creates no public or private community facilities, such as, but not limited to, stormwater control facilities, a central water supply, a central sewage disposal system, or streets.
- B. **MAJOR SUBDIVISION** — Any subdivision that is not a minor subdivision.
- C. **LOT IMPROVEMENT SUBDIVISION** — (Also known as "add-on subdivision.") A minor subdivision involving the realignment of lot lines or the transfer of land to increase the size of an existing lot, provided the grantor's remaining parcel complies with all provisions of this chapter and no new lots are created; or the combination or re-allotment of small lots into a larger lot or lots.

SUBSTANTIALLY COMPLETED — Where, in the judgment of the Municipal Engineer, at least 90% (based on the cost of the required improvements for which financial security was posted pursuant to this chapter) of those improvements required as a condition for final approval have been completed in accordance with the approved plan, so that the project will be able to be used, occupied or operated for its intended use.

SURVEYOR — A professional land surveyor licensed as such in the Commonwealth of Pennsylvania.

TENT — A movable shelter made of canvas or other similar new material and supported by a pole or poles.

TRAVELWAY — The portion of the cartway used for normal movement of vehicles.

WATER CONNECTION (as used in Article VII) — All pipes, fittings and appurtenances from the water-riser pipe to the water inlet pipe of the central water system in the mobile home park.

WATERCOURSE — A discernible, definable natural, man-made or altered course or channel along which water is conveyed ultimately to streams and/or rivers at lower elevations. A watercourse may originate from a lake or underground spring(s) and may be permanent in nature or it may originate from a temporary source such as a runoff from rain or melting snow.

WATER-RISER PIPE (as used in Article VII) — That portion of the water service pipe

which extends vertically to the ground elevation and terminates at each mobile home lot.

WATER SERVICE PIPE (as used in Article VII) — All pipes, fittings valves, and appurtenances from the water main of the mobile home park central water system to the water outlet of the distribution system within the mobile home.

WATER SUPPLY, CENTRAL — A public or private utility system designed to supply and transmit drinking water from a common source to two or more dwelling units or uses in compliance with Pennsylvania Department of Environmental Protection regulations.

WATER SUPPLY, INDIVIDUAL SYSTEM ON CONSERVATION LAND — A system for supplying and transmitting drinking water to a single dwelling or other use from a source located on adjacent conservation land via a use and access easement, and in compliance with the Pennsylvania Department of Environmental Protection if such compliance is required.

WATER SUPPLY, ON-SITE — A system for supplying and transmitting drinking water to a single dwelling or other use from a source located on the same lot, and in compliance with the Pennsylvania Department of Environmental Protection if such compliance is required.

WATER SUPPLY, SHARED — A system for supplying and transmitting drinking water to a minor (residential) land development or to a nonresidential land development with more than one principal structure, in compliance with Pennsylvania Department of Environmental Protection regulations if such compliance is required. (Note: Any water system serving two or more lots shall be considered a central water supply.)

WETLAND — An area of land where the presence of water (at least during part of the year) determines the soil characteristics of the site and the species of vegetation growing on the site, said areas meeting the most current applicable state and federal criteria and being regulated by the PA DEP and the United States Army Corps of Engineers.

YARD — An open unoccupied space which shall extend the full depth or width of a lot and which shall not be occupied by any building. Front yards shall be measured from the edge of the road right-of-way and other yards from property lines perpendicular to the road/property line to the nearest point of the structure.

ARTICLE III
Plan Processing

§ 300-11. General.

All plans for the subdivision and/or development of land within the corporate limits of the Borough shall be submitted to and reviewed by the Borough Planning Commission and other Borough, state and/or county officials as provided in this chapter and shall be approved or disapproved by the Council in accord with the procedures specified in this article.

§ 300-12. Sketch plan.

- A. Optional — sketch plans. Applicants are very strongly encouraged, but not required, to submit a sketch plan to the Planning Commission prior to the submission of a preliminary plan, land development plan or minor plan. The purpose of the sketch plan is to:
- (1) Avoid costly revisions to detailed preliminary plans prepared before a general consensus on the layout is reached with the Planning Commission.
 - (2) Identify the overall objectives of the applicant using a diagrammatic approach, showing broad areas of development and broad areas of conservation.
 - (3) Determine if the plan is a major or a minor subdivision and/or land development.
 - (4) Assist applicants and officials to develop a better understanding of the property.
 - (5) Establish an overall design approach that respects its special or noteworthy features, while providing for the density permitted under the zoning ordinance.⁶⁷
 - (6) The extent to which the plan generally conforms with the provisions of this chapter.
 - (7) Any design parameters deemed necessary by the Borough for conformance to the Borough Comprehensive Plan.⁶⁸
- B. Contiguous holdings. When an application includes only a portion of a landowner's entire tract, or when such portion is contiguous to an adjoining tract of the landowner, a sketch layout shall be included showing future potential subdivision of all the contiguous lands belonging to the landowner to ensure that subdivision may be accomplished in accordance with current codes and with appropriate access. Submission and review of the sketch plan described in this section shall not constitute approval of the future subdivision shown thereon.
- C. Developer request for formal sketch plan review — major subdivisions and land development. The developer may request a formal review of a sketch plan for a

67. Editor's Note: See Ch. 400, Zoning.

68. Editor's Note See Ch. 166, Comprehensive Plan.

major subdivisions or land developments in accord with the provisions of this section.

- (1) Preapplication meeting. A preapplication meeting is encouraged between the applicant, the site designer, and the Planning Commission (and/or its planning consultant) to introduce the applicant to the municipality's zoning and subdivision regulations and procedures, to discuss the applicant's objectives, and to schedule site inspections, meetings and plan submissions as described below. Applicants are also encouraged to present the existing resources and site analysis plan at this meeting.
- (2) Existing resources and site analysis plan. Applicants may submit an existing resources and site analysis plan, in its context, prepared in accord with the requirements of § 300-21D. The purpose of this key submission is to familiarize officials with existing conditions on the applicant's tract and within its immediate vicinity and to provide a complete and factual reference for conducting a site inspection. This plan shall be provided prior to or at the site inspection and shall form the basis for the development design as shown on the sketch plan (or on the preliminary plan, if the optional sketch plan is not submitted).
- (3) Site inspection. After preparing the existing resources and site analysis plan, applicants shall arrange for a site inspection of the property by the Planning Commission and other Borough officials and shall distribute copies of said site analysis plan at that on-site meeting. Applicants, their site designers, and the landowner are encouraged to accompany the Planning Commission. The purpose of the visit is to familiarize local officials with the property's existing conditions and special features, to identify potential site design issues, and to provide an informal opportunity to discuss site design concepts, including the general layout of designated conservation open space (if applicable) and potential locations for proposed buildings and street alignments. Comments made by Borough officials or their staff and consultants shall be interpreted as being only suggestive. It shall be understood by all parties that no formal recommendations can be offered and no official decisions can be made at the site inspection.
- (4) Pre-sketch conference. Following the site inspection and prior to the submission of a diagrammatic sketch plan, the applicant shall meet with the Planning Commission to discuss the findings of the site inspection and to develop a mutual understanding on the general approach for subdividing and/or developing the tract in accordance with the four-step design procedure described in § 300-36 of this chapter, where applicable. At the discretion of the Commission, this conference may be combined with the site inspection.
- (5) Sketch plan submission and review.
 - (a) Ten copies of a sketch plan, meeting the requirements set forth in § 300-20, shall be submitted to the Borough Zoning Officer during business hours for distribution to the Council, the Planning Commission, the Borough Engineer and applicable Borough advisory boards at least 10 working days prior to the Planning Commission meeting at which the

sketch plan is to be discussed. The sketch plan diagrammatically illustrates initial thoughts about a conceptual layout for conservation open space, house sites and street alignments and shall be based closely upon the information contained in the existing resources and site analysis plan. The sketch plan shall also be designed in accordance with the four-step design process described in § 300-36 of this chapter and with the design review standards listed in § 300-37.

- (b) The Planning Commission shall review the sketch plan in accordance with the criteria contained in this chapter and with other applicable ordinances of the municipality. Its review shall informally advise the applicant of the extent to which the proposed subdivision or land development conforms to the relevant standards of this chapter and may suggest possible plan modifications that would increase its degree of conformance. The Commission shall submit its written comments to the applicant. The sketch plan may also be submitted by the Planning Commission to the Lackawanna County Regional Planning Commission for review and comment. Its review shall include but is not limited to:

- [1] The location of all areas proposed for land disturbance (streets, foundations, yards, septic disposal systems, stormwater management areas, etc.) with respect to notable features of natural or cultural significance as identified on the applicant's existing resources and site analysis plan and on the Municipality's Map of Potential Conservation Lands;
- [2] The potential for street connections with existing streets, other proposed streets, or potential developments on adjoining parcels;
- [3] The location of proposed access points along the existing road network;
- [4] The proposed building density and impervious coverage;
- [5] The compatibility of the proposal with respect to the objectives and policy recommendations of the Comprehensive Plan; and
- [6] Consistency with the zoning ordinance.

- (6) Fee. The Borough Council may establish a fee for formal review of a sketch plan in accord with § 300-79.

- D. Nonformal filing. A sketch plan shall be considered a submission for discussion between the applicant and the Planning Commission and shall not constitute a formal filing of a plan with the Planning Commission. All sketch plans submitted shall be so noted on the plan and in the minutes of the Planning Commission.

§ 300-13. Preliminary plans for major subdivisions.

All applications for preliminary plans for major subdivisions shall be submitted to the Borough and processed in accord with this § 300-13.

- A. Submissions not preceded by a sketch plan. If an applicant opts not to submit a

sketch plan, the preliminary plan shall include all information required for sketch plans listed in § 300-20, specifically including the existing resources and site analysis plan, plus further details as required by this chapter.

- B. Site inspection. If requested by the Planning Commission, a site inspection shall be arranged and conducted in accord with § 300-12C.
- C. Official submission of preliminary plans.
 - (1) Plan to be filed with the Borough. Copies of the preliminary plan and all required supporting documentation shall be submitted to the Borough Zoning Officer by the applicant at least 10 working days prior to the Planning Commission meeting at which the applicant applies for the "official date of preliminary plan submission."
 - (2) Number of copies to be submitted. The official submission of the preliminary plan shall include the following: (Additional copies may be required by the Borough at the developer's expense.)
 - (a) Two completed copies of the subdivision plan application.
 - (b) Eight legible paper prints of the preliminary plan.
 - (c) Four copies of the required sewage planning module(s) and associated documentation.
 - (d) Eight copies of all other required supporting data and information as required in Article IV of this chapter.
 - (3) Preliminary plan filing fee. The Borough Zoning Officer shall collect a preliminary plan filing fee as established by resolution of the Council for all subdivisions.
 - (a) In accord with § 300-79, fees shall be charged in order to cover the costs of examining plans and other administrative expenses associated with the review of subdivisions.
 - (b) The applicant shall pay the fee at the time of initial submission of the application to the Zoning Officer.
 - (4) Preliminary plan submission verification and distribution. Upon receipt of the preliminary plan and supporting data, the Borough Zoning Officer shall verify the submission for the required number of copies of all documents.
 - (a) If the submission is verified, the Zoning Officer shall accept the said plans and documentation, complete the submission verification, and provide a copy of the plan submission verification to the applicant. The Borough Zoning Officer shall then contact the Planning Commission Secretary, who shall distribute the plans and documentation in accord with Borough policy to:
 - [1] The Borough Engineer.
 - [2] The Borough Solicitor.

[3] The Borough Sewage Enforcement Officer.

[4] Any other engineer or consultant designated by the Borough.

- (b) If the submission is not verified, the Borough Zoning Officer shall complete the plan submission verification, noting any and all deficiencies or omissions in the submission, provide a copy of the plan submission verification to the applicant and return all documents to the applicant.
 - (c) The plan submission verification shall only verify that the correct number of copies of all plans and documentation have been submitted and shall in no way be construed to be a plan submission receipt.
- (5) Official date of the preliminary plan submission. The official date of the preliminary plan submission shall be determined by the Planning Commission, which shall examine the submission to determine that all documents are complete and in proper form.
- (a) If the submission is not complete or not in the proper form, the applicant shall be notified in writing of the deficiencies, and the submission shall be rejected until the said deficiencies are corrected and then examined again at the next regularly scheduled or special meeting after the resubmission.
 - (b) If the submission is complete and acceptable, the Chairman of the Planning Commission shall complete an official submission receipt listing the date of the said meeting as the official date of the preliminary plan submission and forward said receipt to the applicant.
 - (c) If the first meeting of the Planning Commission following the date of submission verification occurs more than 30 calendar days following the date of submission verification established in accord with § 300-13C(4), the 90 calendar day review period shall be measured from the 30th calendar day following the day of said submission verification.
 - (d) If the application is being submitted after a final order of the court remanding the application to the Borough, the ninety-calendar-day review period shall be measured from the date of the meeting of the Planning Commission next following the final order of the court. If the first meeting of the Planning Commission occurs more than 30 calendar days following the final order of the court, the ninety-calendar-day review period shall be measured from the 30th calendar day following the final order of the court.
- (6) Distribution of the preliminary plan. Following the official date of the preliminary plan submission, the Planning Commission Secretary shall forward the plan and all required supporting documentation to the Lackawanna County Regional Planning Commission. The applicant shall be responsible for submission of the plan and all required supporting documentation to the Lackawanna County Conservation District, PennDOT, and all other governing agencies.

D. Preliminary plan review and action.

- (1) Planning Commission review and action period. The Planning Commission shall review the properly submitted preliminary plan to determine compliance with this chapter and take action to reject or recommend to Council denial, approval, or approval with conditions and modifications of such plan as provided in this § 300-13D. The Planning Commission shall make its recommendation to Council and communicate in writing such recommendation to the applicant within 15 days of when the decision was made.
 - (a) If approval is recommended, the plans and written notice of said recommendation along with the sewage planning and other documentation shall be forwarded to Council.
 - (b) If approval with conditions is recommended, such approval recommendation shall be communicated to Council and the applicant in writing along with a statement of the conditions.
 - (c) If denial is recommended, the specific reasons for such denial, citing specific provisions of this chapter or other applicable statute, and date shall be communicated to Council and the applicant.
- (2) Council review and action period. Upon the receipt of the Planning Commission's recommendation, Council shall make its decision regarding the preliminary plan and communicate in writing such decision to the applicant within 15 days of when the decision is made. However, in no case shall the period for Borough review and action, including the written communication to the applicant, exceed 90 days from the official date of the preliminary plan submission as established pursuant to § 300-13C(5).
- (3) Council approval with conditions. When a preliminary plan is approved with conditions, such conditions shall be expressly included in the minutes of the Council meeting at which the preliminary plan is considered and communicated in writing to the applicant as provided in § 300-13D(2). When a preliminary plan has been approved subject to any conditions and/or modifications and the applicant does not agree and accept the said conditions and/or modifications, in writing, within 15 days of receipt of said written notice, the said conditional approval of the preliminary plan shall become an automatic disapproval, and the said plan shall be resubmitted as required by § 300-13 of this chapter, including a new filing fee. The written notice to the applicant shall include the specific terms of the approval and shall note that failure to agree and accept the conditions shall constitute a denial of the plan.
- (4) Council denials. When a preliminary plan is denied, the reasons for such denial, citing specific provisions of this chapter or other applicable statute, shall be expressly included in the minutes of the meeting at which the preliminary plan is considered and communicated in writing to the applicant as provided in § 300-13D(2).

E. Reviewing agencies' and officials' comments. The Planning Commission and Council may consider the comments and the recommendations provided pursuant

to § 300-13C(6) and may request such additional information as deemed necessary.

- F. Lackawanna County Regional Planning Commission comments. No official action shall be taken by the Council until it has received and considered the comments of the Lackawanna County Regional Planning Commission or after 30 days following transmittal of the preliminary plan to the Lackawanna County Regional Planning Commission.
- G. Sewage facilities planning modules. The Council shall concurrently make its decision on the sewage facilities planning module, and if approval is granted, the completed sewage planning documents shall be forwarded to the Pennsylvania Department of Environmental Protection. Preliminary plan approval shall be conditional upon Department of Environmental Protection sewage planning approval.
- H. Highway occupancy permit. If a highway occupancy permit shall be required for access to a Borough or state road, approval of the preliminary major subdivision plan shall be conditional upon the issuance of a highway occupancy permit by the Borough or PennDOT, as the case may be.
- I. Public hearing. The Planning Commission or Council may conduct a public hearing on the proposed preliminary plan pursuant to public notice.
- J. Time extension. The time period for review of the plan may be extended by mutual agreement of the applicant and the Council, and any such agreement shall be in writing.

§ 300-14. Final plans for major subdivisions.

All final plans for major subdivisions shall be submitted and be processed in accord with this § 300-14.

- A. Final plan application. An application for final plan approval can be submitted only when all of the following conditions have been met:
 - (1) The subdivision has previously been granted an unconditional preliminary plan approval in accord with § 300-13 or all conditions established by the Borough Council for the preliminary plan approval have been fulfilled by the applicant.
 - (2) All improvements, such as roads and drainage facilities (see definition of "improvement" in Article II), which are shown on the preliminary plan, have been completed or guaranteed in accord with Article V of this chapter.
- B. Final plan conformation; five-year protection from ordinance changes. The final plan shall conform in all principal respects to the previously approved preliminary plan. The Planning Commission shall determine whether a modified final plan shall be accepted or whether a new preliminary plan shall be submitted pursuant to § 300-13. In accord with § 300-6 of this chapter and § 508(4) of the MPC, when a preliminary plan has been approved without conditions or approved by the applicant's acceptance of conditions, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied to affect

adversely the right of the applicant to commence and to complete any aspect of the approved development in accord with the terms of such approval within five years from such approval.

- C. Sections. Final plans may be submitted in sections in accord with § 508(4)(v),(vi) and (vii) of the MPC, each covering a portion of the entire proposed subdivision as shown on the preliminary plan.
- (1) Each section in the subdivision, except for the last section, shall contain a minimum of 25% of the total number of lots and/or dwelling units as depicted on the preliminary plan, except that the Council may approve a lesser percentage.
 - (2) When a final plan is proposed to be submitted by sections, a proposed layout of the sections, their boundaries, the order of submission, and a schedule of submission shall be submitted to the Borough for approval prior to submission of the first section.
- D. Official submission of final plans.
- (1) Plan to be filed with the Borough. Copies of the final plan and all required supporting documentation shall be submitted to the Borough Zoning Officer by the applicant or authorized representative by noon at least 10 working days prior to the Planning Commission meeting at which the applicant applies for the "official date of final plan submission."
 - (2) Number of copies to be submitted. The official submission of the final plan shall include the following:
 - (a) Two completed copies of the subdivision plan review application.
 - (b) Eight legible paper prints of the final plan. Following recommendation for approval by the Planning Commission and when all corrections have been made to the final plan, seven paper prints shall be submitted for final signature.
 - (c) Four copies of all required sewage disposal approvals and/or permits from the Pennsylvania Department of Environmental Protection.
 - (d) Four copies of the applicable highway occupancy permit.
 - (e) Eight copies of all other required supporting data and information as required in Article IV of this chapter.
 - (3) Final plan filing fee. The Borough Zoning Officer shall collect a final plan filing fee as established by resolution of the Council for all subdivisions.
 - (a) Fees charged shall cover the costs of examining plans and other administrative expenses associated with the review of subdivision.
 - (b) The applicant shall pay the fee at the time of initial submission of the application to the Zoning Officer.
 - (4) Final plan submission verification and distribution. Upon receipt of the final

plan and supporting data, the Borough Zoning Officer shall verify the submission for the required number of copies of all documents.

- (a) If the submission is verified, the Zoning Officer shall accept the said plans and documentation, complete the submission verification, and provide a copy of the plan submission verification to the applicant. The Borough Zoning Officer shall then contact the Planning Commission Secretary, who shall distribute the plans and documentation in accord with Borough policy to:
 - [1] The Borough Engineer.
 - [2] The Borough Solicitor.
 - [3] The Borough Sewage Enforcement Officer.
 - [4] Any other engineer or consultant designated by the Borough.
 - (b) If the submission is not verified, the Zoning Officer shall complete the plan submission verification, noting any and all deficiencies or omissions in the submission, provide a copy of the plan submission verification to the applicant, and return all documents to the applicant.
 - (c) The plan submission verification shall only verify that the correct number of copies of all plans and documentation have been submitted and shall in no way be construed to be a plan submission receipt.
- (5) Official date of the final plan submission. The official date of the final plan submission shall be determined by the Planning Commission, which shall examine the submission to determine that all documents are complete and in proper form.
- (a) If the submission is not complete or not in the proper form, the applicant shall be notified in writing of the deficiencies, and the submission shall be rejected until the said deficiencies are corrected and then examined again at the next regularly scheduled or special meeting after the resubmission.
 - (b) If the submission is complete and acceptable, the Chairman of the Planning Commission shall complete an official submission receipt listing the date of the said meeting as the official date of the final plan submission and forward said receipt to the applicant.
 - (c) If the first meeting of the Planning Commission following the date of submission verification occurs more than 30 calendar days following the date of submission verification established in accord with § 300-14D(4), the ninety-calendar-day review period shall be measured from the 30th calendar day following the day of said submission verification.
 - (d) If the application is being submitted after a final order of the court remanding the application to the Borough, the ninety-calendar-day review period shall be measured from the date of the meeting of the Planning Commission next following the final order of the court. If the

first meeting of the Planning Commission occurs more than 30 calendar days following the final order of the court, the ninety-calendar-day review period shall be measured from the 30th calendar day following the final order of the court.

- (6) Distribution of the final plan. Following the official date of the final plan submission, the Planning Commission Secretary shall forward the plan and all required supporting documentation to the Lackawanna County Regional Planning Commission. The applicant shall be responsible for submission of the plan and all required supporting documentation to the Lackawanna County Conservation District, PennDOT and all other governing agencies.

E. Final plan review and action.

- (1) Planning Commission review and action period. The Planning Commission shall review the properly submitted final plan to determine compliance with this chapter and take action to reject or recommend to Council denial, approval, or approval with conditions and modifications of such plan, as provided in this § 300-14E. The Planning Commission shall make its recommendation to Council and communicate, in writing, such recommendation to the applicant within 15 calendar days of when the decision was made.
 - (a) If approval is recommended, the plan and written notice of said recommendation, along with the other documentation, shall be forwarded to Council.
 - (b) If approval with conditions is recommended, such approval recommendation shall be communicated to Council and the applicant, in writing, along with a statement of such conditions.
 - (c) If denial is recommended, the specific reasons for such denial, citing specific provisions of this chapter or other applicable statute, and the date of the denial recommendation, shall be communicated to Council and the applicant, in writing.
- (2) Council review and action period. Upon the receipt of the Planning Commission's recommendation, Council shall make its decision regarding the final plan and communicate, in writing, such decision to the applicant within 15 calendar days of when the decision is made. However, in no case shall the period for Borough review and action, including the written communication to the applicant, exceed 90 calendar days from the official date of the final plan submission as established pursuant to § 300-14D(5).
- (3) Council approval with conditions. When a final plan is approved with conditions, such conditions shall be expressly included in the minutes of the Council meeting at which the final plan is considered and communicated, in writing, to the applicant as provided in § 300-14E(2). When a final plan has been approved subject to any conditions and/or modifications and the applicant does not agree and accept the said conditions and/or modifications, in writing, within 15 calendar days of receipt of said written notice, the said conditional approval of the final plan shall become an automatic disapproval,

and the said plan shall be resubmitted as required by § 300-14, including a new filing fee. The written notice to the applicant shall include the specific terms of the approval and shall note that failure to agree and accept the conditions shall constitute a denial of the plan.

- (4) Council denials. When a final plan is denied, the reasons for such denial, citing specific provisions of this chapter or other applicable statute, shall be expressly included in the minutes of the Council meeting at which the final plan is considered and communicated, in writing, to the applicant as provided in § 300-14E(2).
- F. Reviewing agencies' and officials' comments. The Planning Commission and Council shall consider the comments and the recommendations provided pursuant to § 300-14D(6) and may request such additional information as deemed necessary.
- G. Lackawanna County Regional Planning Commission comments. No official action shall be taken by the Council until it has received and considered the comments of the Lackawanna County Regional Planning Commission or after 30 calendar days following transmittal of the final plan to the Lackawanna County Regional Planning Commission.
- H. Public hearing. The Planning Commission or Council may conduct a public hearing on the proposed final plan pursuant to public notice.
- I. Planned improvements. The Council shall not approve or sign the final plan until such time as all the improvements shown on the final plan have been installed by the developer and verified as complete by the Borough Engineer or a performance guarantee has been provided by the applicant pursuant to Article V of this chapter.
- J. Signature of final plan. When all requirements and conditions have been fulfilled by the applicant and all supplemental data and documents have been submitted and approved, the Council shall endorse the final plan for recording purposes and shall retain at least one endorsed print.
- K. Recording of the final plan. The applicant shall file the final record plan with the Lackawanna County Recorder of Deeds within 90 calendar days of the date of endorsement by the Council and provide to the Borough proof of such recording within 15 calendar days of such recording. If the applicant fails to record the final record plan in the Recorder's office within the required ninety-calendar day period, the action of the Council shall be deemed null and void and a resubmission of the plan shall be made to the Planning Commission.
- L. As-built plans. Upon the completion of all improvements, the applicant shall provide to the Borough plans certified by the applicant's surveyor and engineer showing all such improvements as installed. Five percent of any financial guarantee held by the Borough shall be retained until the as-built plans are submitted. Failure of the applicant to provide the as-built plans shall constitute a violation of this chapter and shall be subject to all the enforcement proceedings contained in this chapter.
- M. Time extension. The time period for review of the plan may be extended by mutual agreement of the applicant and the Council, and any such agreement shall be in

writing.

§ 300-15. Minor subdivisions.

Preliminary plans for minor subdivisions shall not be required. However, a final plan for all minor subdivisions shall be submitted to the Borough and be processed in accord with this § 300-15.

A. Official submission of minor subdivision plans.

- (1) Plan to be filed with the Borough. Copies of the minor subdivision plan and all required supporting documentation shall be submitted to the Borough Zoning Officer by the applicant or authorized representative by noon at least 10 working days prior to the Planning Commission meeting at which the applicant applies for the "official date of minor subdivision plan submission."
- (2) Number of copies to be submitted. The official submission of the minor subdivision plan shall include the following:
 - (a) Two completed copies of the subdivision plan application.
 - (b) Eight legible paper prints of the minor subdivision plan.
 - (c) Four copies of the required sewage planning module(s) and associated documentation.
 - (d) Eight copies of all other required supporting data and information as required in Article IV of this chapter.
- (3) Minor subdivision plan filing fee. The Borough Zoning Officer shall collect a minor subdivision plan filing fee as established by resolution of the Council for all subdivisions.
 - (a) Fees charged shall cover the costs of examining plans and other administrative expenses associated with the review of a subdivision.
 - (b) The applicant shall pay the fee at the time of initial submission of the application to the Zoning Officer.
- (4) Minor subdivision plan submission verification and distribution. Upon receipt of the minor subdivision plan and supporting data, the Borough Zoning Officer shall verify the submission for the required number of copies of all documents.
 - (a) If the submission is verified, the Zoning Officer shall accept the said plans and documentation, complete the submission verification, and provide a copy of the plan submission verification to the applicant. The Borough Zoning Officer shall then contact the Planning Commission Secretary, who shall distribute the plans and documentation in accord with Borough policy to:
 - [1] The Borough Engineer.
 - [2] The Borough Solicitor.

[3] The Borough Sewage Enforcement Officer.

[4] Any other engineer or consultant designated by the Borough.

- (b) If the submission is not verified, the Zoning Officer shall complete the plan submission verification, noting any and all deficiencies or omissions in the submission, provide a copy of the plan submission verification to the applicant, and return all documents to the applicant.
 - (c) The plan submission verification shall only verify that the correct number of copies of all plans and documentation have been submitted and shall in no way be construed to be a plan submission receipt.
- (5) Official date of the minor subdivision submission. The official date of the minor subdivision plan submission shall be determined by the Planning Commission, which shall examine the submission to determine that all documents are complete and in proper form.
- (a) If the submission is not complete or not in the proper form, the applicant shall be notified in writing of the deficiencies, and the submission shall be rejected until the said deficiencies are corrected and then examined again at the next regularly scheduled or special meeting after the resubmission.
 - (b) If the submission is complete and acceptable, the Chairman of the Planning Commission shall complete an official submission receipt listing the date of the said meeting as the official date of the minor subdivision plan submission and forward said receipt to the applicant.
 - (c) If the first meeting of the Planning Commission following the date of submission verification occurs more than 30 calendar days following the date of submission verification established in accord with § 300-15A(4), the ninety-calendar-day review period shall be measured from the 30th calendar day following the day of said submission verification.
 - (d) If the application is being submitted after a final order of the court remanding the application to the Borough, the ninety-calendar-day review period shall be measured from the date of the meeting of the Planning Commission next following the final order of the court. If the first meeting of the Planning Commission occurs more than 30 calendar days following the final order of the court, the ninety-calendar-day review period shall be measured from the 30th calendar day following the final order of the court.
- (6) Distribution of the minor subdivision plan. Following the official date of the minor subdivision submission, the Planning Commission Secretary shall forward the plan and all required supporting documentation to the Lackawanna County Regional Planning Commission. The applicant shall be responsible for submission of the plan and all required supporting documentation to the Lackawanna County Conservation District, PennDOT and all other governing agencies.

B. Minor subdivision plan review and action.

- (1) Planning Commission review and action period. The Planning Commission shall review the properly submitted minor subdivision plan to determine compliance with this chapter and take action to reject or recommend to Council denial, approval, or approval with conditions and modifications of such plan, as provided in this § 300-15B. The Planning Commission shall make its recommendation to Council and communicate, in writing, such recommendation to the applicant within 15 calendar days of when the decision was made.
 - (a) If approval is recommended, the plan and written notice of said recommendation, along with the other documentation, shall be forwarded to Council.
 - (b) If approval with conditions is recommended, such approval recommendation shall be communicated to Council and the applicant, in writing, along with a statement of such conditions.
 - (c) If denial is recommended, the specific reasons for such denial, citing specific provisions of this chapter or other applicable statute, and the date of the denial recommendation shall be communicated to Council and the applicant, in writing.
- (2) Council review and action period. Upon the receipt of the Planning Commission's recommendation, Council shall make its decision regarding the minor subdivision plan and communicate, in writing, such decision to the applicant within 15 calendar days of when the decision is made. However, in no case shall the period for Borough review and action, including the written communication to the applicant, exceed 90 calendar days from the official date of the minor subdivision plan submission as established pursuant to § 300-15A(5).
- (3) Council approval with conditions. When a minor subdivision plan is approved with conditions, such conditions shall be expressly included in the minutes of the Council meeting at which the minor subdivision plan is considered and communicated, in writing, to the applicant as provided in § 300-15B(2). When a minor subdivision plan has been approved subject to any conditions and/or modifications and the applicant does not agree and accept the said conditions and/or modifications, in writing, within 15 calendar days of receipt of said written notice, the said conditional approval of the minor subdivision plan shall become an automatic disapproval, and the said plan shall be resubmitted as required by § 300-15, including a new filing fee. The written notice to the applicant shall include the specific terms of the approval and shall note that failure to agree and accept the conditions shall constitute a denial of the plan.
- (4) Council denials. When a minor subdivision plan is denied, the reasons for such denial, citing specific provisions of this chapter or other applicable statute, shall be expressly included in the minutes of the Council meeting at which the minor subdivision plan is considered and communicated, in writing, to the applicant as provided in § 300-15B(2).

- C. Reviewing agencies' and officials' comments. The Planning Commission and Council shall consider the comments and the recommendations pursuant to § 300-15A(6) and may request such additional information as deemed necessary.
- D. Lackawanna County Regional Planning Commission comments. No official action shall be taken by the Council until it has received and considered the comments of the Lackawanna County Regional Planning Commission or after 30 calendar days following transmittal of the minor subdivision plan to the Lackawanna County Regional Commission.
- E. Sewage facilities planning modules. The Council shall concurrently make its decision on the sewage facilities planning module, and, if approval is granted, the completed sewage planning documents shall be forwarded to the Pennsylvania Department of Environmental Protection. Minor subdivision plan approval shall be conditional upon Department of Environmental Protection sewage planning approval.
- F. Highway occupancy permit. If a highway occupancy permit shall be required for access to a Borough or state road, approval of the minor subdivision plan shall be conditional upon the issuance of a highway occupancy permit by the Borough or PennDOT, as the case may be.
- G. Soil erosion and sedimentation control. Approval of the preliminary plan shall be conditional upon the approval of the soil erosion and sedimentation control plan by the Lackawanna County Conservation District and the issuance of any associated permits.
- H. Public hearing. The Planning Commission or Council may conduct a public hearing on the proposed minor subdivision plan pursuant to public notice.
- I. Signature of minor subdivision plan. When all requirements and conditions have been fulfilled by the applicant and all supplemental data and documents have been submitted and approved, the Council shall endorse the minor subdivision plan for recording purposes and shall retain at least one endorsed print.
- J. Recording of the minor subdivision plan. The applicant shall file the minor subdivision record plan with the Lackawanna County Recorder of Deeds within 90 calendar days of the date of endorsement by the Council and provide to the Borough proof of such recording within 15 calendar days of such recording. If the applicant fails to record the minor subdivision record plan in the Recorder's office within the required ninety-calendar day period, the action of the Council shall be deemed null and void, and a resubmission of the plan shall be made to the Planning Commission.
- K. Time extension. The time period for review of the plan may be extended by mutual agreement of the applicant and the Council, and any such agreement shall be in writing.

§ 300-16. Plans for land developments.

- A. General procedures.

(1) Applicability. All plans for land developments, except as noted in Subsection

A(3) below, shall be submitted and processed in accord with this § 300-16.

- (2) Intent. The intent of this § 300-16 is to combine the preliminary and final plan approval stages into one step for land developments which do not involve the transfer of any interest in real estate, other than rental or short-term lease. Requiring preliminary and final approval for such land developments is not necessary because no transfer of real estate is proposed, and the preliminary-final process is not necessary to assure the completion of improvements for the protection of individual purchasers. Occupancy of any structures which are part of the land development shall not be permitted until all required improvements have been completed by the developer and approved by the Borough.
 - (3) Nonqualifying land developments. Land developments (e.g., condominiums or townhouses transferred in fee) which involve the transfer of any interest in real estate, other than rental or short-term lease, shall comply with §§ 300-13 and 300-14 of this chapter.
- B. Land development plan application. An application for land development plan approval shall be submitted in accord with this § 300-16.
- C. Official submission of land development plans.
- (1) Plan to be filed with the Borough. Copies of the land development plan and all required supporting documentation shall be submitted to the Borough Zoning Officer by the applicant or his authorized representative at least 10 working days prior to the Planning Commission meeting at which the applicant applies for the official date of land development plan submission.
 - (2) Number of copies to be submitted. The official submission of the land development plan shall include the following:
 - (a) Ten completed copies of the land development plan review application.
 - (b) Ten legible paper prints of the land development plan. Following recommendation for approval by the Planning Commission and when all corrections have been made to the land development plan, seven prints shall be submitted for final signature.
 - (c) Six copies of all required sewage disposal approvals and/or permits from the Pennsylvania Department of Environmental Protection.
 - (d) Six copies of all other required supporting data and information as required in Article IV of this chapter.
 - (3) Land development plan filing fee. The Borough Zoning Officer shall collect a land development plan filing fee as established by resolution of the Council.
 - (a) Fees charged shall cover the costs of examining plans and other administrative expenses associated with the review of land developments.
 - (b) The applicant shall pay the fee at the time of initial submission of the application to the Zoning Officer.

- (4) Land development plan submission verification and distribution. Upon receipt of the land development plan and supporting data, the Borough Zoning Officer shall verify the submission for the required number of copies of all documents.
 - (a) If the submission is verified, the Zoning Officer shall accept the said plans and documentation, complete the submission verification, and provide a copy of the plan submission verification to the applicant. The Borough Zoning Officer shall then contact the Planning Commission Secretary, who shall distribute the plans and documentation in accord with Borough policy to:
 - [1] The Borough Engineer.
 - [2] The Borough Solicitor.
 - [3] The Borough Sewage Enforcement Officer.
 - [4] Any other engineer or consultant designated by the Borough.
 - (b) If the submission is not verified, the Zoning Officer shall complete the plan submission verification, noting any and all deficiencies or omissions in the submission, provide a copy of the plan submission verification to the applicant, and return all documents to the applicant.
 - (c) The plan submission verification shall only verify that the correct number of copies of all plans and documentation have been submitted and shall in no way be construed to be a plan submission receipt.
- (5) Official date of the land development plan submission. The official date of the land development plan submission shall be determined by the Planning Commission, which shall examine the submission to determine that all documents are complete and in proper form.
 - (a) If the submission is not complete or not in the proper form, the applicant shall be notified, in writing, of the deficiencies, and the submission shall be rejected until the said deficiencies are corrected and then examined again at the next regularly scheduled or special meeting after the resubmission.
 - (b) If the submission is complete and acceptable, the Chairman of the Planning Commission shall complete an official submission receipt listing the date of the said meeting as the official date of the land development plan submission and forward said receipt to the applicant.
 - (c) If the first meeting of the Planning Commission following the date of submission verification occurs more than 30 calendar days following the date of submission verification established in accord with § 300-16C(4), the ninety-calendar-day review period shall be measured from the 30th calendar day following the day of said submission verification.
 - (d) If the application is being submitted after a final order of the court remanding the application to the Borough, the ninety-calendar-day review period shall be measured from the date of the meeting of the

Planning Commission next following the final order of the court. If the first meeting of the Planning Commission occurs more than 30 calendar days following the final order of the court, the ninety-calendar-day review period shall be measured from the 30th calendar day following the final order of the court.

- (6) Distribution of the land development plan. Following the official date of the land development plan submission, the Planning Commission Secretary shall forward the plan and all required supporting documentation to the Lackawanna County Regional Planning Commission. The applicant shall be responsible for submission of the plan and all required supporting documentation to the Lackawanna County Conservation District, PennDOT, and all other governing agencies.

D. Land development plan review and action.

- (1) Planning Commission review and action period. The Planning Commission shall review the properly submitted land development plan to determine compliance with this chapter and take action to reject or recommend to Council denial, approval, or approval with conditions and modifications of such plan, as provided in this § 300-16D. The Planning Commission shall make its recommendation to Council and communicate, in writing, such recommendations to the applicant within 15 calendar days of when the decision was made.
 - (a) If approval is recommended, the signed and dated plan shall be forwarded to Council.
 - (b) If approval with conditions is recommended, the plan shall not be signed, but such approval recommendation shall be communicated to Council and the applicant, in writing, along with a statement of such conditions.
 - (c) If denial is recommended, the specific reasons for such denial, citing specific provisions of this chapter or other applicable statute, and the date of denial shall be communicated to Council and the applicant, in writing.
- (2) Council review and action period. Upon the receipt of the Planning Commission's recommendation, Council shall make its decision regarding the land development plan and communicate, in writing, such decision to the applicant within 15 calendar days of when the decision is made. However, in no case shall the period for Borough review and action, including written communication to the applicant, exceed 90 calendar days from the official date of the land development submission, as established pursuant to § 306-16C(5).
- (3) Council approval with conditions. When a land development plan is approved with conditions, such conditions shall be expressly included in the minutes of the Council meeting at which the land development plan is considered and communicated, in writing, to the applicant as provided in § 300-16D(2). When a land development plan has been approved subject to any conditions and/or modifications, and the applicant does not agree and accept the said conditions and/or modifications in writing within 15 calendar days of receipt of said written notice, the said conditional approval of the land development plan shall

become an automatic disapproval, and the said plan shall be resubmitted as required by § 300-16, including a new filing fee. The written notice to the applicant shall include the specific terms of the approval and shall note that failure to agree and accept the conditions shall constitute a denial of the plan.

- (4) Council denials. When a land development plan is denied, the reasons for such denial, citing specific provisions of this chapter or other applicable statute, shall be expressly included in the minutes of the Council meeting at which the land development plan is considered and communicated, in writing, to the applicant as provided in § 300-16D(2).
- E. Reviewing agencies' and officials' comments. The Planning Commission and Council shall consider the comments and the recommendations provided pursuant to § 300-16C(16) and may request such additional information as deemed necessary.
- F. Lackawanna County Regional Planning Commission comments. No official action shall be taken by the Council until it has received and considered the comments of the Lackawanna County Regional Planning Commission or after 30 calendar days following transmittal of the land development plan to the Lackawanna County Regional Commission.
- G. Sewage facilities planning modules. The Council shall concurrently make its decision on the sewage facilities planning module, and if approval is granted, the completed sewage planning documents shall be forwarded to the Pennsylvania Department of Environmental Protection. Land development plan approval shall be conditional upon Department of Environmental Protection sewage planning approval.
- H. Highway occupancy permit. If a highway occupancy permit shall be required for access to a Borough or state road, approval of the land development plan shall be conditional upon the issuance of a highway occupancy permit by the Borough or PennDOT, as the case may be.
- I. Soil erosion and sedimentation control. Approval of the land development plan shall be conditional upon the approval of the soil erosion and sedimentation control plan by the Lackawanna County Conservation District and the issuance of any associated permits.
- J. Public hearing. The Planning Commission or Council may conduct a public hearing on the proposed land development plan pursuant to public notice.
- K. Authorization to proceed with land development or to provide a financial guarantee. Following any approval granted pursuant to § 300-16D(2) and when all requirements and conditions have been fulfilled by the applicant to satisfy any conditional approval, the Council shall provide to the applicant a letter authorizing the applicant to proceed with site development and construction in accord with the approved plan. In lieu of constructing the improvements, the applicant may provide a financial guarantee in accord with Article V of this chapter.
- L. Final approval; signature on land development plan. The Council shall not sign the land development plan until such time as all the improvements shown on the land

development plan have been installed by the applicant and have been verified as complete by the Borough Engineer or a performance guarantee has been provided by the applicant pursuant to Article V of this chapter. When all these requirements and conditions have been fulfilled by the applicant, the Council shall endorse the land development plan for recording purposes.

- M. Recording of the land development plan. The applicant shall file the final record plan with the Lackawanna County Recorder of Deeds within 90 calendar days of the date of endorsement by the Council and provide to the Borough proof of such recording within 15 calendar days of such recording. If the applicant fails to record the final record plan in the Recorder's office within the required ninety-calendar day period, the action of the Council shall be deemed null and void, and a resubmission of the plan shall be made to the Planning Commission.
- N. As-built plans. Upon the completion of all improvements, the applicant shall provide to the Borough plans certified by the applicant's surveyor and engineer showing all such improvements as installed. Five percent of any financial guarantee held by the Borough shall be retained until the as-built plans are submitted. Failure of the applicant to provide the as-built plans shall constitute a violation of this chapter and shall be subject to all the enforcement proceedings contained in this chapter.
- O. Certificate of conformance. No use of land or structure within the land development shall be initiated until such time as a certificate of conformance has been issued for the land and structure(s) in accord with this chapter. In cases where a financial guarantee for final approval has been provided in lieu of the construction of improvements, no certificate of conformance shall be issued until such time as all the improvements shown on the land development plan have been installed by the applicant and have been certified as complete by the applicant's engineer and inspected by the Borough Engineer pursuant to Article V of this chapter, and as built plans have been provided by the applicant.
- P. Time extension. The time period for review of the plan may be extended by mutual agreement of the applicant and the Council, and any such agreement shall be in writing.

§ 300-17. Lot improvement subdivisions.

- A. Lot improvement subdivisions, which involve the combination of lots of record which are shown on a map on file at the office of the Lackawanna County Recorder of Deeds (the applicant shall certify to the Council that the subject map is, in fact, on record) and which do not involve the creation of any new lot lines, may be submitted directly to the Planning Commission. A new map for such lot improvements shall not be required; however, the combination shall be effected by the execution of an owner's affidavit for same, which shall be recorded with the Lackawanna County Recorder of Deeds upon the signature of the applicant and the Council. The owner's affidavit shall be in such form as required by the Council upon the recommendation of the Borough Solicitor, and it shall include a reference to the lot numbers of the subject lots and the plat book and page number where the map is recorded.

- B. Lot improvement subdivisions which involve the creation of new lot lines shall require a new subdivision map and shall be processed in the manner set forth in § 300-15; however, sewage planning modules may not be required unless additional, new sewage disposal areas are proposed. The applicable notes listed in § 300-23C(2) shall be included on the map, and the combination language shall also be included in the deed from the grantor to the grantee and made binding on the combined parcel(s) of the grantee via articles of restrictive covenants.
- C. All documents to be recorded to effect any lot improvement subdivision shall be in such form as approved by the Council with the recommendation of the Borough Solicitor, and said documents shall be turned over to the Borough Solicitor, who shall record same. The fee for lot improvement subdivisions shall be established by resolution of the Council and shall include the costs of recording.

§ 300-18. Subdivision from large parcel.

In cases where a parcel is being subdivided in order to convey one or more lots, such that the parent parcel when subdivided remains 10 acres or more in size, the requirement that the parent parcel be surveyed may be waived by the Council, provided not more than four lots shall be platted from the parent parcel in any one-year period and the applicant can demonstrate to the satisfaction of the Council that an adequate description of the parent parcel is on record which may be a recorded survey map or recorded deed description. All parcel(s) subdivided therefrom shall be surveyed and platted in accord with all the requirements of this chapter, and said parcel(s) shall front on a public road or evidence satisfactory to the Council otherwise demonstrating access shall be provided by the applicant. The subdivision shall in all other respects be processed in accord with this chapter.

§ 300-19. Contiguous municipalities.

In accord with § 502.1(b) of the MPC, the governing body of any municipality contiguous to the Borough may appear before the Planning Commission and/or Council to comment on a proposed subdivision, change of land use, or land development.

ARTICLE IV
Plan Requirements

§ 300-20. Sketch plan overlay sheet.

To provide a full understanding of the site's potential and to facilitate the most effective exchange with the Planning Commission, the sketch plan should include the information listed below. Many of these items can be taken from the existing resources and site analysis plan (see § 300-21D), a document that must in any case be prepared and submitted no later than the date of the site inspection which precedes the preliminary plan. In fact, the diagrammatic sketch plan may be prepared as a simple overlay sheet placed on top of the existing resources and site analysis plan.

- A. Name and address of the legal owner, the equitable owner, and/or the applicant;
- B. Name and address of the professional engineer, surveyor, planner, architect, landscape architect, or site designer responsible for preparing the plan;
- C. Graphic scale (not greater than one inch equals 200 feet; however, dimensions on the plan need not be exact at this stage), and North arrow;
- D. Approximate tract boundaries, sufficient to locate the tract on a map of the municipality;
- E. Location map;
- F. Zoning district;
- G. Streets on and adjacent to the tract (both existing and proposed);
- H. One-hundred-year floodplain limits;
- I. Approximate location of wetlands;
- J. Topographic, physical and cultural features, including fields, pastures, meadows, wooded areas, trees with a diameter of 15 inches or more, hedgerows and other significant vegetation, steep slopes (over 25%), rock outcrops, soil types, ponds, ditches, drains, dumps, storage tanks, streams within 200 feet of the tract, and existing rights-of-way and easements, and cultural features such as all structures, foundations, walls, wells, trails and abandoned roads;
- K. Schematic layout indicating a general concept for land conservation and development;
- L. Proposed general street and lot layout;
- M. General description of proposed method of water supply, sewage disposal, and stormwater management;
- N. In the case of land development plans, proposed location of buildings and major structures, parking areas and other improvements;
- O. A map of the entire contiguous holdings of the owner or developer showing anticipated locations of roads.

§ 300-21. Preliminary plan requirements for major subdivisions.

(See § 300-25 for land developments.)

- A. Preliminary plans shall be prepared by a qualified professional (see definition in Article II), as applicable and required by state law. The submission requirements for a preliminary plan shall consist of the following elements and shall be prepared in accordance with the drafting standards and plan requirements described herein:
 - (1) Site context map.
 - (2) Existing resources and site analysis plan.
 - (3) Preliminary resource impact and conservation plan.
 - (4) Preliminary improvements plan.
 - (5) Preliminary studies and reports as set forth in other parts of this chapter.
- B. Drafting standards.
 - (1) The plan shall be clearly and legibly drawn at a scale of 10 feet, 20 feet, 30 feet, 40 feet, 50 feet, 60 feet, 80 feet, 100 feet or 200 feet to the inch.
 - (2) Dimensions shall be in feet and hundredths of feet; bearings shall be in degrees, minutes and seconds for the boundary of the entire tract, and dimensions in feet for lot lines.
 - (3) The survey shall not have an error of closure greater than one in 10,000 feet.
 - (4) The sheet size shall be no smaller than 12 inches by 18 inches and no larger than 24 inches by 36 inches. If the plan is prepared in two or more sections, a key map showing the location of the sections shall be placed on each sheet. If more than one sheet is necessary, each sheet shall be the same size and numbered to show the relationship to the total number of sheets in the plan (e.g., Sheet 1 of 5), and a key diagram showing the relative location of the several sections shall be drawn on each sheet.
 - (5) Plans shall be legible in every detail.
- C. Site context map. A map showing the location of the proposed subdivision within its neighborhood context shall be submitted. For sites under 100 acres in area, such maps shall be at a scale not less than one inch equals 200 feet and shall show the relationship of the subject property to natural and man-made features existing within 1,000 feet of the site. For sites of 100 acres or more, the scale shall be one inch equals 400 feet and shall show the above relationships within 2,000 feet of the site. The features that shall be shown on site context maps include topography (from USGS maps), streams, wetlands (from maps published by the United States Fish & Wildlife Service or the United States Department of Agriculture Natural Resources Conservation Service), woodlands over 1/2 acre in area, ridgelines, public roads and trails, utility easements and rights-of-way, public land, and land protected under conservation easements.
- D. Existing resources and site analysis plan. For all subdivisions (except those in

which all proposed lots are to be 10 or more acres in area), an existing resources and site analysis plan shall be prepared to provide the developer and the municipality with a comprehensive analysis of existing conditions, both on the proposed development site and within 500 feet of the site. Conditions beyond the parcel boundaries may be described on the basis of existing published data available from governmental agencies and from aerial photographs. The Planning Commission shall review the plan to assess its accuracy, conformance with municipal ordinances, and likely impact upon the natural and cultural resources on the property. The following information shall be included in this plan:

- (1) Topography, the contour lines of which shall generally be at two-foot intervals, determined by photogrammetry (although ten-foot intervals are permissible beyond the parcel boundaries, interpolated from USGS published maps). The determination of appropriate contour intervals shall be made by the Planning Commission, which may specify greater or lesser intervals on exceptionally steep or flat sites. Slopes between 15% and 25% and exceeding 25% shall be clearly indicated. Topography for major subdivisions shall be prepared by a professional land surveyor or professional engineer from an actual field survey of the site or from stereoscopic aerial photography and shall be coordinated with official USGS bench marks.
- (2) The location and delineation of ponds, streams, ditches, drains and natural drainage swales, as well as the one-hundred-year floodplains and wetlands, as defined in Borough ordinances. Additional areas of wetlands on the proposed development parcel shall also be indicated, as evident from testing, visual inspection, or from the presence of wetland vegetation.
- (3) Vegetative cover conditions on the property according to general cover type, including cultivated land, permanent grass land, meadow, pasture, old field, hedgerow, woodland and wetland. Vegetative types shall be described by plant community, relative age and condition.
- (4) Soil series, types and phases, as mapped by the United States Department of Agriculture Natural Resources Conservation Service in the published soil survey for the county, and accompanying data published for each soil relating to its suitability for construction (and, in unsewered areas, for on-site sewage disposal suitability).
- (5) Ridgelines and watershed boundaries shall be identified.
- (6) A viewshed analysis showing the location and extent of views into the property from public roads and from public parks, public forests, and state game lands.
- (7) Geologic formations on the proposed development parcel, including rock outcroppings, cliffs, sinkholes, and fault lines, based on available published information or more detailed data obtained by the applicant.
- (8) All existing man-made features, including but not limited to streets, driveways, farm roads, woods roads, buildings, foundations, walls, wells, drainage fields, dumps, utilities, fire hydrants, and storm and sanitary sewers.

- (9) Locations of all historically significant sites or structures on the tract, including but not limited to cellar holes, stone walls, earthworks and graves.
- (10) Locations of trails that have been in public use (pedestrian, equestrian, bicycle, etc.).
- (11) All easements and other encumbrances of property which are or have been filed of record with the Recorder of Deeds of Lackawanna County shall be shown on the plan.
- (12) Total acreage of the tract, the adjusted tract area (for conservation design developments) and the constrained land area with detailed supporting calculations.

E. Preliminary resource impact and conservation plan.

- (1) A preliminary resource impact and conservation plan shall be prepared for all major subdivision and land development applications to categorize the impacts of the proposed activities and physical alterations on those resources shown on the existing resources and site analysis plan (as required under § 300-21D). All proposed improvements, including but not necessarily limited to grading, fill, streets, buildings, utilities and stormwater detention facilities, as proposed in the other conceptual preliminary plan documents, shall be taken into account in preparing the preliminary resource impact and conservation plan, which shall clearly demonstrate that the applicant has minimized site disturbance to the greatest extent practicable.
- (2) Using the existing resources and site analysis plan as a base map, impact areas shall be mapped according to the following categories:
 - (a) Primary impact areas, i.e., areas directly impacted by the proposed subdivision;
 - (b) Secondary impact areas, i.e., areas in proximity to primary areas which may be impacted; and
 - (c) Designated protected areas, either to be included in a proposed conservation open space or an equivalent designation such as dedication of a neighborhood park site.
- (3) This requirement for a preliminary resource impact and conservation plan may be waived by the Council if, in its judgment, the proposed development areas, as laid out in the sketch plan or in the preliminary plan, would be likely to cause no more than an insignificant impact upon the site's resources.

F. Preliminary improvements plan. This plan shall include the following items:

- (1) Historic resources, trails and significant natural features, including topography, areas of steep slope, wetlands, one-hundred-year floodplains, swales, rock outcroppings, vegetation, existing utilities, and other site features, as indicated on the existing resources and site analysis plan.
- (2) Existing and proposed lot lines, lot areas, any existing easements and rights-

of-way.

- (3) Conservation open space.
- (4) Location, alignment, width, profile and tentative names of all proposed streets and street rights-of-way, including all street extensions or spurs that are reasonably necessary to provide adequate street connections and facilities to adjoining development or undeveloped areas; preliminarily engineered profiles for proposed streets.
- (5) Location of proposed swales, drainage easements, stormwater and other management facilities.
- (6) Where community sewage service is proposed, the conceptual layout of proposed sewage systems, including, but not limited to, the tentative locations of sewer mains and sewage treatment plants, showing the type and degree of treatment intended and the size and capacity of treatment facilities.
- (7) Where central water service is proposed, the layout of proposed water distribution facilities, including water mains, fire hydrants, storage tanks and, where appropriate, wells or other water sources.
- (8) Location of all percolation tests as may be required under this chapter, including all failed test sites or pits, as well as those approved, and including an approved alternate site for each lot. All approved sites shall be clearly distinguished from unapproved sites.
- (9) Limit-of-disturbance line.
- (10) Location and dimensions of proposed playgrounds, public buildings, public areas and parcels of land proposed to be dedicated or reserved for public use.
- (11) If land to be subdivided lies partly in or abuts another municipality, the applicant shall submit information concerning the location and conceptual design of streets, layout and size of lots, and provisions of public improvements on land subject to his control within the adjoining municipality. The design of public improvements shall provide for a smooth, practical transition where specifications vary between municipalities. Evidence of approval of this information by appropriate officials of the adjoining municipality also shall be submitted.
- (12) Where the applicant proposes to install the improvements in phases, he shall submit with the preliminary plan a delineation of the proposed sections and a schedule of deadlines within which applications for final approval of each section are intended to be filed.
- (13) Utilities and easements.
 - (a) Locations of existing and proposed utility easements.
 - (b) Layout of all proposed sanitary and storm sewers and location of all inlets and culverts, and any proposed connections with existing facilities. (This data may be on a separate plan.)

- (c) The tentative location of proposed on-site sewage and water facilities.
 - (14) Location of proposed shade trees, plus locations of existing vegetation to be retained.
 - (15) Signature block for the Council on the right-hand side.
 - (16) Zoning data, including all of the following, when applicable:
 - (a) Zoning district designations.
 - (b) Zoning district boundary lines transversing the proposed subdivision and/or development.
 - (c) Zoning district boundary lines within 1,000 feet of the proposed subdivision and/or development, shown on location map.
 - (17) A title block in the lower right corner.
 - (18) Name of project.
 - (19) Name and address of the owner of record (if a corporation, give name of each officer), and current deed book volume and page where the deed of record is recorded.
 - (20) Name and address of developer if different from landowner (if a corporation, give name of each officer).
 - (21) Name, address, license number, seal and signature of the qualified professional (see definition in Article II) responsible for the preparation of the plan.
 - (22) Date, including the month, day and year that the preliminary plan was completed and the month, day and year for each plan revision, along with a description of the revision.
 - (23) A key map for the purpose of locating the property being subdivided and showing the relation of the property, differentiated by tone or pattern, to adjoining property and to all streets, roads, municipal boundaries, zoning districts, watercourses and any area subject to flooding.
 - (24) North arrow (true or magnetic).
 - (25) Graphic scale and written scale.
 - (26) Names of present adjoining property owners and the names of all adjoining subdivisions, if any, including property owners and/or subdivisions across adjacent roads, along with the current property identification number for each property shown.
- G. Supporting documents and information. The following supporting documents, plans and information shall be submitted with preliminary plans for all major subdivisions:
- (1) Typical street cross-section drawings for all proposed streets, showing the following:

- (a) Typical cut sections.
 - (b) Typical fill sections.
 - (c) Superelevated sections.
 - (d) Typical parallel drainage.
- (2) Profiles along the top of the cartway center line, or as otherwise required by this chapter, showing existing and proposed grade lines, and printed elevations of the proposed grade lines at fifty-foot intervals.
 - (3) Any existing or proposed deed restrictions and protective and restrictive covenants that apply to the subdivision and/or development plan.
 - (4) All proposed offers of dedication and/or reservation of rights-of-way and land areas with conditions attached.
 - (5) Existing documents of dedication and/or reservation of rights-of-way and land areas with conditions attached.
 - (6) Proof of legal interest in the property and the latest deed of record.
 - (7) Water supply information. In the case of individual on-lot wells, information documenting water table depth and potential for affecting the groundwater supply. In the case of community systems:
 - (a) A statement from a professional engineer of the type and adequacy of any community water supply system proposed to serve the project.
 - (b) Preliminary design of any central water supply system.
 - (c) Connection to central system. A letter from the water company or authority stating that the said company or authority will supply the development, including a verification of the adequacy of service.
 - (d) New central system. A statement setting forth the proposed ownership of the system and responsibility for operation and maintenance.
 - (e) A copy of any application for any permit, license or certificate required by PA DEP or the Pennsylvania Public Utility Commission for the construction and operation of any proposed central water supply system. Preliminary plan approval shall be conditioned on the issuance of said permits by PA DEP and/or PA PUC.
 - (8) Sewage disposal information:
 - (a) Completed sewage facilities planning module(s) for land development and other required sewage planning documents as required by the Pennsylvania Sewage Facilities Act and PA DEP.
 - (b) Connection to Borough Sewer Authority system. Documentation from the Authority that service will be provided and that the applicant has complied with all Authority requirements.

- (c) Private sewage treatment plants and community on-lot systems. A preliminary design of the system and a statement setting forth the proposed ownership of the system and responsibility for operation and maintenance.
- (9) A list of any public utility, environmental or other permits required, and if none are required, a statement to that effect. The Borough may require a professional engineer's certification of such list.
- (10) Soil erosion and sedimentation control plan.
- (11) Drainage/stormwater management plan meeting the requirements of this chapter and any stormwater management ordinance adopted by the Borough.
- (12) Preliminary bridge designs and a statement by the applicant's engineer regarding any approvals required by the state or federal government.
- (13) A statement indicating any existing or proposed zoning variances or subdivision waivers/modifications.
- (14) Where the land included in the subject application has an electric transmission line, a gas pipeline, or a petroleum or petroleum products transmission line located within the tract, the preliminary plan shall be accompanied by a letter from the owner or lessee of such right-of-way stating any conditions on the use of the land and the minimum building setback and/or right-of-way-lines. This requirement may also be satisfied by submitting a copy of the recorded agreement.
- (15) Highway occupancy permit.
- (16) A plan for the ownership and maintenance of all improvements and common areas as required by § 300-33.
- (17) A traffic impact study if required by Chapter 400, Zoning.
- (18) An environmental impact statement prepared in accord with the Borough Zoning Ordinance in Chapter 400 may be required if the Planning Commission or Council deems it necessary based on the size, site features, or other characteristics of the project.
- H. Additional information. The Planning Commission or Council shall require any other necessary information based on the specific characteristics of the proposed project.
- I. Application forms and certifications. The applicant shall complete and submit such application forms and certifications as prescribed by the Borough for submission with the preliminary plan application.
- J. Preliminary plan engineering certification. Prior to approval of the preliminary plan, the applicant shall submit to the Council a preliminary plan engineering certification, stating that the layout of proposed streets, house lots, and conservation open space complies with the Borough's Zoning and Subdivision and Land Development Ordinances, particularly those sections governing the design of

subdivision streets and stormwater management facilities, and that all improvements will be installed in accord with the specific requirements of this chapter or any waivers or modifications granted by the Council. This certification requirement is meant to provide the Council with assurance that the proposed plan is able to be accomplished within the Borough's current regulations.

§ 300-22. Final plan requirements for major subdivisions.

(See § 300-25 for land developments.)

Final plans shall be prepared by a qualified professional (see definition in Article II), as applicable and required by state law. Final plans shall be submitted pursuant to the following:

- A. Existing resources and site analysis plan. A plan, as required by § 300-21D, consistent with the terms of the approved preliminary plan and modified, as necessary, to show the proposal for final approval.
- B. Final resource impact and conservation plan.
 - (1) This plan shall comply with all of the requirements for the preliminary resource impact and conservation plan, as set forth in § 300-21E, to show all proposed improvements described in the other detailed final plan documents as required by this § 300-22.
 - (2) In addition to the requirements of § 300-21E, the applicant shall submit an accompanying resource assessment report divided into the following sections:
 - (a) Description of existing resources (as documented in § 300-21D).
 - (b) Impacts of the proposed development on existing resources, correlated to the areas depicted in the final resource impact and conservation plan.
 - (c) Measures taken to minimize and control such impacts both during and following the period of site disturbance and construction.
 - (d) The qualifications and experience of the preparer of the report.
- C. Final plan information. The final plan shall be drawn to the same drafting standards, contain all of the information required on the preliminary plan and the following additional information:
 - (1) The full plan of the proposed development, including, but not limited to, the following information and data:
 - (a) Sufficient bearings, lengths of lines, radii, arc lengths and chords of all lots, streets, rights-of-way, easements, community or public areas and areas to be dedicated to accurately and completely reproduce each and every course on the ground.
 - (b) All dimensions in feet and hundredths of a foot.
 - (c) All bearings to the nearest one second of the arc.

- (d) Street names.
 - (e) Street widths and right-of-way and easement widths.
 - (f) A clear sight triangle shall be shown for all street intersections.
 - (g) Block and lot numbers.
 - (h) Total tract area and area of each lot to the nearest 1/100 of square feet or acres.
 - (i) Location and type of permanent monuments and markers which have been found or set in place.
 - (j) Building setback lines for each lot or the proposed placement of each building.
 - (k) Excepted parcels or sections shall be marked "not included in this plat" and their boundary completely indicated by bearings and distances.
 - (l) A statement of intended use of all lots, with reference to restrictions of any type which exist as covenants in the deed for the lots contained in the subdivision, and if the covenants are recorded, including the book and page.
 - (m) The deed book volume and page number referencing the latest source(s) of title to the land being developed.
 - (n) Lackawanna County property identification number.
 - (o) The location, ownership and maintenance responsibility of common facilities and conservation open space.
- (2) The following items and notes shall be on all final plans, when applicable, in the form of protective and/or restrictive covenants:
- (a) Building setbacks.
 - (b) Corner lot easements for clear sight triangles.
 - (c) Corner lot driveway locations.
 - (d) Utility and drainage easements, including ownership and maintenance responsibility.
 - (e) "Wells and sewage disposal systems shall be constructed in accord with the current standards of the Pennsylvania Department of Environmental Protection and the Borough of Dalton."
 - (f) "Individual owners of lots must apply to the Borough for a sewage permit prior to the construction of any on-lot sewage disposal system."
 - (g) "In granting this approval, the Borough has not certified or guaranteed the feasibility of the installation of any type of well or sewage disposal system on any individual lot shown on this plan."

- (h) "All lots shown on this plan are subject to the rules and regulations contained in the Borough of Dalton Zoning Ordinance."
- (3) The following general notes shall be included on all final plans, if applicable:
 - (a) In the event the subdivision incorporates a private access street as defined in this chapter, the following: "The improvement and maintenance of any private access street shall be the sole responsibility of those persons benefitting from the use thereof."
 - (b) In the event of a "lot improvement" proposal: "Lot/parcel _____ shall be joined to and become an inseparable part of lot/parcel _____ as recorded in Deed Book Volume _____, Page _____ and cannot be subdivided, conveyed or sold separately or apart therefrom without prior Borough approval" and "Approval is granted for recording purposes only."
 - (c) "Highway occupancy permits are required for access to roads under the jurisdiction of the Pennsylvania Department of Transportation pursuant to the State Highway Law⁶⁹ (P.L. 1242, No. 428, § 420) and for access to roads under the jurisdiction of the Borough of Dalton pursuant to Borough of Dalton road encroachment requirements."
 - (d) In the case where wetlands are present or if otherwise required by the Borough: "The developer and/or the lot purchaser(s) assumes full responsibility for obtaining any local, state and federal permits and/or approvals relating to wetlands. Approval by the Borough Council shall not in any manner be construed to be an approval of compliance with statutes or regulations relating to wetlands. The Borough of Dalton shall have no liability or responsibility for the same to the developer or purchaser(s)."
 - (e) When on-site subsurface sewage disposal is proposed: "This approval in no way certifies or guarantees the suitability of any lot for the installation of a subsurface sewage disposal system. The PA DEP planning conducted as part of the subdivision plan approval process is for general suitability only, and a sewage permit will be required prior to the issuance of any building permit."
 - (f) In the case where the requirement for sewage planning is waived by the Borough: "The lot(s) shown on this plan have not been approved for any type of sewage disposal based upon the representation by the developer that the lot(s) will be used for purposes other than a dwelling, commercial establishment, or any use which generates wastewater. The development of the lot(s) for any such purpose shall require a sewage permit, zoning and other applicable approvals by the Borough of Dalton."
 - (g) In the case where common land and/or facilities are proposed: "Common open land, common recreation land, common facilities and development improvements shall not be sold separately or be further subdivided or developed, nor shall such land be used for density for any other

69. Editor's Note: See 36 P.S. § 670-420.

development."

- (4) In the case of land developments, the location and configuration of project buildings, parking compounds, streets, access drives, driveways, and all other planned facilities.
- D. Supporting documents and information. The following supporting documents and information shall be submitted with the final plan for major subdivisions:
- (1) Typical final street cross-section drawings for all proposed streets and/or roads, showing the following:
 - (a) Typical cut sections.
 - (b) Typical fill sections.
 - (c) Typical superelevated sections.
 - (d) Typical parallel drainage.
 - (2) Final profiles along the top of the cartway (pavement) center line, showing existing and final grade lines, and printed elevations of the final grade line at fifty-foot intervals, unless otherwise required by this chapter.
 - (3) Any existing and finally proposed deed restrictions and protective and restrictive covenants that apply to the subdivision and/or development plan.
 - (4) All existing and offers of dedication and/or reservation of rights-of-way and land areas with conditions attached.
 - (5) Proof of legal interest in the property and the latest deed of record.
 - (6) Water supply and sewage disposal information:
 - (a) Final plan of any central water supply and/or sewage disposal system showing all pertinent details.
 - (b) All other documentation required to demonstrate compliance with this chapter.
 - (7) All required state or federal environmental permits.
 - (8) Highway occupancy permits.
 - (9) Soil erosion and sedimentation control plan approved by the Lackawanna County Conservation District.
 - (10) Final drainage/stormwater management plan.
 - (11) Final bridge designs and required state or federal approvals.
 - (12) A statement setting forth any zoning variances or subdivision waivers/modification obtained.
 - (13) Where the land included in the subject application has an electric transmission line, a gas pipeline, or a petroleum or petroleum products transmission line

located within the tract, the final plan shall be accompanied by a letter from the owner or lessee of such right-of-way, stating any conditions on the use of the land and the minimum building setback and/or right-of-way-lines. This requirement may also be satisfied by submitting a copy of the recorded agreement.

- E. Additional information. The Planning Commission or Council shall require any other necessary information based on the specific characteristics of the proposed project.
- F. Application forms and certifications. The applicant shall complete and submit such application forms and certifications as prescribed by the Borough for submission with the final plan application.
- G. Maintenance of development improvements. The developer shall provide a proposed plan for the succession of ownership and continued operation and maintenance of all development improvements, amenities and common use or open space areas in accord with Article V. The Council shall determine the adequacy of the plan and shall require any additional assurance to provide for proper operation and maintenance.

§ 300-23. Minor subdivisions, final plan requirements.

Plans for minor subdivision shall be prepared by a qualified professional (see definition in Article II), as applicable, and required by state law and shall be submitted pursuant to the following:

A. Drafting standards.

- (1) The plan shall be clearly and legibly drawn at a scale of 10 feet, 20 feet, 30 feet, 40 feet, 50 feet, 60 feet, 80 feet, 100 feet or 200 feet to the inch.
- (2) Dimensions shall be in feet and hundredths of feet; bearings shall be in degrees, minutes and seconds for the boundary of the entire tract, and dimensions in feet for lot lines.
- (3) The survey shall not have an error of closure greater than one in 10,000 feet.
- (4) The sheet size shall be no smaller than 12 inches by 18 inches and no larger than 24 inches by 36 inches. If the plan is prepared in two or more sections, a key map showing the location of the sections shall be placed on each sheet. If more than one sheet is necessary, each sheet shall be the same size and numbered to show the relationship to the total number of sheets in the plan (e.g., Sheet 1 of 5), and a key diagram showing the relative location of the several sections shall be drawn on each sheet.
- (5) Plans shall be legible in every detail.

B. Minor subdivision plan information.

- (1) Name of subdivision.
- (2) Name and address of the owner of record (if a corporation give name of each

officer).

- (3) Name and address of developer, if different from landowner (if a corporation, give name of each officer).
- (4) Name, address, license number, seal and signature of the qualified professional (see definition in Article II) responsible for the preparation of the subdivision plan.
- (5) Date, including the month, day and year that the final plan for the minor subdivision was completed and the month, day and year of each plan revision, along with a description of the revision.
- (6) The deed book volume and page number reference of the latest source(s) of title to the land being subdivided.
- (7) North arrow (true or magnetic).
- (8) Graphic scale and written scale.
- (9) Lots numbered in consecutive order, along with lots previously subdivided from the parcel.
- (10) A plat of the area proposed to be subdivided, including the tract boundaries, if appropriate, street lines and names, lot lines, rights-of-way or easements (existing and/or proposed, if any).
- (11) Sufficient data, acceptable to the Borough, to determine readily the location, bearing and length of every boundary, street or lot line. All dimensions shall be shown in feet and hundredths of a foot. All bearings shall be shown to the nearest one second of the arc.
- (12) The area of each lot or parcel shall be shown within each lot or parcel, and the area of each shown in the nearest 1/100 of an acre or square feet.
- (13) Reference monuments and/or lot markers shall be shown on the plan and shall be placed as required by § 300-41.
- (14) Any existing buildings located on the tract being subdivided to demonstrate compliance with setback requirements.
- (15) The proposed building reserve (setback) lines for each lot or the proposed placement of each building.
- (16) The name and/or number and pavement width and right-of-way lines of all existing public streets and the name, location and pavement width and right-of-way lines of all other roads within or abutting the property.
- (17) Names of adjoining property owners including those across adjacent roads and the names of all adjoining subdivisions including those across adjacent roads, with the deed book volume and page number where each property and/or subdivision is recorded, along with the property identification number for each property shown.

- (18) Watercourses, lakes, streams, ponds with names, rock outcrops and stone fields, location of existing tree masses and other significant features, constructed or natural, including utilities, wells and sewage systems.
- (19) Wetlands.
- (20) A clear sight triangle shall be clearly shown for all street intersections.
- (21) Site data, including total acreage, number of lots, existing zoning district and property identification number.
- (22) Contour lines at an interval of not greater than 20 feet as superimposed from the latest USGS quadrangle or from a field survey. A minimum of two contour lines are required to show direction and amount of slope.
- (23) Location of all flood hazard areas as shown on the most recent FIA/FEMA mapping.
- (24) The location and extent of various soil types by SCS classification for each type.
- (25) The location of any soil test pits and/or percolation tests. The logs of the test pit evaluations and the results of the percolation tests shall accompany the plan.
- (26) Any existing or proposed areas of wells and subsurface sewage disposal fields when on-site disposal is proposed.
- (27) A key map for the purpose of locating the property being subdivided.
- (28) Signature block for the Council on the right-hand side.
- (29) A title block on the lower right corner.
- (30) The following items and notes shall be on all final plans, when applicable, in the form of protective and/or restrictive covenants:
 - (a) Building setbacks.
 - (b) Corner lot easements for clear sight triangles.
 - (c) Corner lot driveway locations.
 - (d) Utility and drainage easements, including ownership and maintenance responsibility.
 - (e) "Wells and sewage disposal systems shall be constructed in accord with the current standards of the Pennsylvania Department of Environmental Protection and the Borough of Dalton."
 - (f) "Individual owners of lots must apply to the Borough for a sewage permit prior to the construction of any on-lot sewage disposal system."
 - (g) "In granting this approval, the Borough has not certified or guaranteed the feasibility of the installation of any type of well or sewage disposal

system on any individual lot shown on this plan."

C. General notes. The following general notes shall be included on all final plans, if applicable:

- (1) In the event the subdivision incorporates a private access street as defined in this chapter, the following: "The improvement and maintenance of any private access street shall be the sole responsibility of those persons benefitting from the use thereof."
- (2) In the event of a "lot improvement" proposal: "Lot/parcel __ shall be joined to and become an inseparable part of lot/parcel ____ as recorded in Deed Book Volume ____, Page ____ and cannot be subdivided, conveyed or sold separately or apart therefrom without prior Borough approval" and "Approval is granted for recording purposes only."
- (3) "Highway occupancy permits are required for access to roads under the jurisdiction of the Pennsylvania Department of Transportation pursuant to the State Highway Law (P.L. 1242, No. 428, § 420) and for access to roads under the jurisdiction of the Borough of Dalton pursuant to Borough of Dalton road encroachment requirements."
- (4) In the case where wetlands are present or if otherwise required by the Borough: "The developer and/or the lot purchaser(s) assumes full responsibility for obtaining any local, state and federal permits and/or approvals relating to wetlands. Approval by the Borough Council shall not in any manner be construed to be an approval of compliance with statutes or regulations relating to wetlands. The Borough of Dalton shall have no liability or responsibility for the same to the developer or purchaser(s)."
- (5) When on-site subsurface sewage disposal is proposed: "This approval in no way certifies or guarantees the suitability of any lot for the installation of a subsurface sewage disposal system. The PA DEP planning conducted as part of the subdivision plan approval process is for general suitability only, and a sewage permit will be required prior to the issuance of any building permit."
- (6) In the case where the requirement for sewage planning is waived by the Borough: "The lot(s) shown on this plan have not been approved for any type of sewage disposal based upon the representation by the developer that the lot(s) will be used for purposes other than a dwelling, commercial establishment, or any use which generates wastewater. The development of the lot(s) for any such purpose shall require a sewage permit, zoning and other applicable approvals by the Borough of Dalton."
- (7) In the case where common land and/or facilities are involved: "Common open land, common recreation land, common facilities and development improvements shall not be sold separately or be further subdivided or developed, nor shall such land be used for density for any other development."

D. Supporting documents and information.

- (1) The required sewage facilities planning modules along with the site

investigation reports.

- (2) If connection to the Borough Sewer Authority system is proposed, documentation from the Authority that service will be provided and that the applicant has complied with all Authority requirements.
 - (3) If connection to a central system is proposed, a letter from the water company or authority stating that the said company or authority will supply the development, including a verification of the adequacy of service and documentation that the applicant has complied with all water company requirements.
 - (4) Typical cross sections for any private access street of a design adequate for anticipated traffic, along with center-line profiles and vertical curve data.
- E. Additional information. The Planning Commission or Council shall request any other necessary information based on the specific characteristics of the proposed project.
- F. Application forms and certifications. The applicant shall complete and submit such application forms and certifications as prescribed by the Borough for submission with the minor subdivision application.

§ 300-24. Plan requirements for lot improvement subdivisions.

The plan requirements set forth in § 300-23 for minor subdivisions shall also apply to lot improvement subdivisions. In addition, copies of the deeds prepared for recording shall be provided, and said deeds shall effect the lot improvements on the approved plans and shall be recorded along with the approved plans.

§ 300-25. Plan requirements for land developments.

Land development plans and applications shall contain all information required by the Borough to determine compliance with this chapter and any other applicable requirements.

- A. Plan requirements. The plan requirements for final plans for major subdivisions in § 300-22 shall serve as the guide for the types of information which may be required. In addition to the information required by § 300-22, the land development plan shall include all details of required improvements necessary to confirm compliance with this chapter and all other applicable Borough ordinances. This shall include, but not be limited to, access drives, parking and loading areas, walkways, stormwater facilities, and buffer areas.
- B. Survey. A survey of the parcel of property containing the proposed land development shall generally be required; however, the Council shall have the right to waive the requirement for a survey in cases where circumstances do not dictate the need for a survey to assure compliance with applicable requirements.
- C. Design standards and improvements. All design standards and required improvements specified by this chapter shall apply to land developments. The Council shall also have the right to apply any reasonable additional standards and

requirements necessary to effect the purposes of this chapter.

ARTICLE V

Improvement Construction and Guarantees and Open Land**§ 300-26. General.**

- A. No project shall be considered in compliance with this chapter until the streets, parking facilities, storm drainage facilities, water and sewer facilities, lot line markers and survey monuments and all other required or proposed improvements have been installed in accord with this chapter.
- B. No final plan shall be signed by the Council for recording in the office of the Lackawanna County Recorder of Deeds until:
 - (1) All improvements required by this chapter are installed to the specifications contained in Article VI of this chapter and other Borough requirements, and such improvements are inspected by the Borough Engineer and are certified as complete and in compliance with this chapter by the applicant's engineer; or
 - (2) An improvements construction guarantee in accord with § 503 of the Pennsylvania Municipalities Planning Code has been accepted by the Council.
- C. Any approval granted by the Council for any improvement required by this chapter shall be for subdivision and/or land development approval purposes only and shall not constitute in any manner an approval for dedication of any improvements to the Borough.

§ 300-27. PennDOT required improvements.

An applicant shall not be required to provide financial security for the costs of any improvements for which financial security is required by and provided to the Pennsylvania Department of Transportation in connection with the issuance of a highway occupancy permit pursuant to § 420 of the Act of June 1, 1945 (P.L. 1242, No. 428) known as the "State Highway Law."⁷⁰

§ 300-28. Sections/stages.

In cases where final plan approval is proposed in sections or stages, the Council shall require the construction or guarantee of any and all development improvements required for the service or protection of any section or stage of the development proposed for final approval.

§ 300-29. Improvement construction guarantees.

- A. Acceptable guarantees. The following are acceptable forms of improvement construction guarantees:
 - (1) Surety performance bond. A security bond from a surety bonding company authorized to do business in the Commonwealth of Pennsylvania and approved by the Council. The bond shall be payable to the Borough of Dalton.

70. Editor's Note: See 36 P.S. § 670-420.

- (2) Escrow account. A deposit of cash either with the Borough or in escrow with a financial institution. The use of a financial institution for establishing an escrow account shall be subject to approval by the Council.
 - (3) Irrevocable letter of credit. A letter of credit provided by a developer from a financial institution or other reputable institution subject to the approval of the Council.
 - (4) Other forms. Other forms of collateral, including, but not limited to, real estate mortgages as the Council may require or accept as part of the security.
 - (5) Additional requirements. The following requirements shall apply to the financial guarantees set forth in § 300-29A:
 - (a) The funds of any guarantee shall be held in trust until released by the Council and may not be used or pledged by the developer as security in any other matter during that period.
 - (b) In the case of a failure on the part of the developer to complete said improvements, the institution shall immediately make the funds available to the Council for use in the completion of those improvements approved as part of the final plan and as may be required to service any lots or dwelling units as determined by the Council.
 - (c) The creditor shall guarantee funds in the amount required by this chapter.
 - (d) The guarantee shall not be withdrawn or reduced in amount until released by the Council.
- B. Amount of security. The amount of financial security to be posted for the completion of the required improvements shall be equal to 110% of the cost of completion estimated as of 90 calendar days following the date scheduled for completion by the developer. Annually, the Council may adjust the amount of the financial security by comparing the actual cost of the improvements which have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the 90th calendar day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the Council may require the developer to post additional security in order to assure that the financial security equals said 110%. Any additional security shall be posted by the developer in accord with this § 300-29.
- (1) The amount of guarantee required shall be based upon an estimate of the cost of completion of the required improvements, prepared by the developer's engineer licensed as such in Pennsylvania and certified in writing by such engineer to be a fair and reasonable estimate of such cost. The Council, upon the recommendation of the Borough Engineer, may refuse to accept such estimate for good cause shown. If the applicant and the Council are unable to agree upon an estimate, then the estimate shall be recalculated and certified by another professional engineer licensed as such in Pennsylvania and chosen mutually by the Council and the developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said

engineer shall be paid equally by the Borough and the applicant or developer.

- (2) If the developer requires more than one year from the date of posting the guarantee to complete the required improvements, the amount of the guarantee shall be increased by an additional 10% for each one-year period beyond the first anniversary date of posting the guarantee or to an amount not exceeding 110% of the cost of completing the improvements as reestablished on or about the expiration of the preceding one-year period, as estimated using the procedure established by this § 300-29B.
- C. Terms of guarantee. Construction guarantees shall be submitted in a form and with such surety as approved by the Council to assure that all improvements shall be completed within a fixed period of time but not to exceed five years from the date of preliminary plan approval.
- D. Release of improvement construction guarantees.
- (1) Partial release. The developer may request the release of such portions of the construction guarantee for completed improvements.
 - (a) Request. All such requests shall be in writing to the Council with a copy to the Borough Engineer and shall include a certification from the developer's engineer that the subject improvements have been completed in accord with the approved plans and Borough standards.
 - (b) Inspection. Within 45 calendar days of receipt of such request, the Council shall direct the Borough Engineer to inspect the subject improvements and certify, in writing, to the Council the completion in accord with the approved plans and Borough standards, and the Council shall authorize release of such portion of the construction guarantee established by the Borough Engineer to represent the value of the completed improvements. If the Council fails to act within said forty-five-calendar-day period, the Council shall be deemed to have approved the release of funds as requested. The Council may, prior to final release at the time of completion and certification by the Borough Engineer, require retention of 10% of the estimated cost of the aforesaid improvements.
 - (2) Final release. When the developer has completed the construction of all required improvements, the developer shall so notify the Council.
 - (a) Notification. Such notification shall be in writing, by certified or registered mail, with a copy to the Borough Engineer and shall include a certification from the developer's engineer that all required improvements have been completed in accord with the approved plans and Borough standards.
 - (b) Inspection. Within 10 calendar days of receipt of said notice, the Council shall direct and authorize the Borough Engineer to make a final inspection of the subject improvements.
 - (c) Report. The Borough Engineer shall, within 30 calendar days of said

authorization, file a detailed written report with the Council with a copy mailed to the developer by certified or registered mail, recommending approval or rejection of said improvements either in whole or in part, and if said improvements or any portion thereof shall not be approved or shall be rejected, said report shall contain, by specific ordinance reference, a statement of reasons for nonapproval or rejection.

- (d) Action. Within 15 calendar days of receipt of the Borough Engineer's report, the Council shall act upon said report and shall notify the developer, in writing, by certified or registered mail, of its action. If the Council or the Borough Engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved, and the developer shall be released from all liability pursuant to its performance guaranty.
- (e) Rejected or unapproved improvements. If any portion of the subject improvements are not approved or are rejected by the Council, the developer shall proceed to rectify and/or complete the same and, upon completion, the same procedure of notification, as outlined in § 300-29D(2)(a) shall be followed.
- (f) Remedies to effect completion of improvements. In the event that any improvements which may be required have not been installed as provided in this chapter or in accord with the approved plan, the Council may enforce any corporate bond or other guarantee by appropriate legal and equitable remedies. If proceeds of the guarantee are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by the said security, the Council may, at its option, install part of such improvements in all or part of the subdivision and/or development and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the guarantee or from any legal or equitable action brought against the developer, or both, shall be used solely for the installation of the improvements covered by such security and not for any other Borough purposes except for reimbursement of Borough court costs, reasonable attorneys' fees and other costs of enforcement.

§ 300-30. Improvements construction.

This section shall apply to all construction of improvements whether the improvements are completed prior to final plan approval or guarantees are provided.

- A. Construction plans and drawings. The construction of any improvements shown on an approved preliminary plan or in conjunction with the final plan application and guarantee proposal shall be accomplished only in accord with the approved final construction plans detailing the design and installation of all improvements and documenting compliance with this chapter.
- B. Schedule. The developer shall, at least 15 calendar days prior to the initiation of construction of any required improvements, submit to the Borough a schedule of

construction for all required improvements, including the timing of the development of any proposed sections. The schedule may be revised from time to time upon mutual agreement of the applicant Engineer and the Borough Engineer.

- C. Inspections. Based upon the construction schedule and the nature of the required improvements and within 14 calendar days of receipt of the said construction schedule, the Borough Engineer shall prepare Borough inspection requirements to ensure the construction of the required improvements in accord with the approved plan and Borough standards. In addition to all final inspections required for all improvements, inspections shall be required at all phases of construction when a failure to inspect would result in a physical impossibility to verify compliance at the time of the final inspection (e.g., backfilling of sewer or waterline trenches). This may require a full-time inspector.
- D. Notice. The developer shall provide a minimum of five working days' notice prior to the time when construction will have proceeded to the time of a required inspection. Construction shall not proceed further until the Borough Engineer conducts the inspection and approves the improvements.
- E. Cost. The cost of all inspections conducted by the Borough shall be borne by the developer.

§ 300-31. Improvement maintenance guarantee.

- A. Guarantee. Before final approval is granted, the developer shall provide to the Borough a maintenance guarantee in an amount determined by the Council but not less than 15% of the cost of all required improvements as estimated by the applicant's engineer and approved by the Borough Engineer.
 - (1) Such maintenance guarantee shall be in such form as prescribed in § 300-29A and shall guarantee that the developer shall maintain all improvements in good condition during the 26 months after the completion of construction or installation and final approval of all improvements. If the developer is negligent or fails to maintain all improvements in good condition during the twenty-six-month period, the Council may enforce the maintenance guarantee, bond or other surety by appropriate and equitable remedies. If proceeds of such bond or other surety are insufficient to pay the cost of maintaining the improvements during the said twenty-six-month period, the Council, at its option, may institute appropriate legal or equitable action to recover the monies necessary for maintaining the improvements in good condition.
 - (2) After the expiration of the 26 months from the date of the final approval of the subject improvements and if all improvements are certified by the Borough Engineer to be in good condition, the Council shall release the said maintenance guarantee and surety to the developer or party posting the said maintenance guarantee and surety.
- B. Central sewage guarantee. This section shall only apply if guarantees are not required by the Borough Sewer Authority.
 - (1) In lieu of the requirements of § 300-31A above, the Council may require a guarantee from the developer for the maintenance, operation and repair of any

central sewage system for three years after completion of construction. Said bond shall be posted immediately after the system receives final approval and before it is put into operation.

- (2) In instances where the system use will not reach operational capacity within a period of one year, however, the Council may require that such guarantee provide for the maintenance and operation of the system for a period of three years from the time operational capacity is reached. The amount of said maintenance guarantee shall be determined by the Council but shall generally not exceed 25% of the estimated cost of the system as verified by the Borough Engineer.
- (3) Upon the expiration of the term of the maintenance guarantee, the Council shall release said maintenance guarantee, provided that the system has been properly maintained and operated during the term of the guarantee and is currently operating properly and in conformance with the applicable DEP discharge requirements. In the event the system is not so maintained and operated, the Council, at any time during the term of the guarantee and upon 30 calendar days' notice, shall have the right to declare a forfeiture of a portion or all of the said maintenance guarantee, depending on the extent of the lack of maintenance and proper operation, and shall use the proceeds for such maintenance and corrective measures as shall be required. If proceeds of such bond or other surety are insufficient to pay the cost of maintaining the improvements during the said three-year period, the Council, at its option, may institute appropriate legal or equitable action to recover the monies necessary for maintaining the improvements in good condition.

§ 300-32. Continued ownership and maintenance of improvements.

The developer shall provide to the satisfaction of the Council, and prior to final plan approval, evidence of the provision for the succession of ownership and responsibility for maintenance of development improvements.

A. Private operation and maintenance.

- (1) Land developments. In the case of land developments, such provision shall be in the form of deed covenants and restrictions clearly placing the responsibility of maintenance of all development improvements with the owner of the land development.
- (2) Residential developments. In the case of subdivisions, cluster developments, multifamily housing projects and other residential developments involving the transfer of property, the developer shall provide, by deed covenants and restrictions, for the creation of a property owners' association (POA), or equivalent entity, to assume the ultimate ownership of all development improvements and responsibility for maintenance of such improvements. Membership in the POA shall be mandatory for all property owners in the development. The developer shall also be a member of the POA and shall remain responsible for payment of any per-lot dues or fees assessed by the POA which are associated with improvements serving said lots. The deed covenants and restrictions creating the POA shall be approved by the Council.

- (3) Any improvements which will remain private. In the case where roads, drainage facilities, a central sewage treatment system or central water supply, or any other improvements are to remain private, the developer shall provide for the establishment of an escrow fund in accord with § 300-29A to guarantee the operation and maintenance of the improvements. Said fund shall be established on a permanent basis with administrative provisions approved by the Council. The amount of said fund shall be established by the Council, but in no case shall be less than 15% nor more than 25% of the construction cost of the system as verified by the Borough Engineer. The maintenance and operation of the improvements and the administration of any required maintenance fund account shall be clearly established as the joint responsibility of the owner(s) of each structure or dwelling unit served by such system. Such responsibility and the mechanism to accomplish same shall be established by deed covenants and restrictions which shall be approved by the Council.
 - (4) Failure to operate and maintain improvements. If any private improvements are not operated or maintained adequately to assure the function of said improvements consistent with Borough requirements and/or the needs of the users of said improvements, the Council shall have the right to perform said operation and maintenance to meet the intent of this chapter and otherwise protect the public health, safety and welfare. The Council shall use any and/or all legal authority and remedies in law available to accomplish same and shall assess the legal, construction and other costs for same to the person(s) responsible for or benefitting from said proper operation and maintenance. Such actions may include, but are not limited to, those prescribed in Article X of this chapter, injunctive relief, or the formation of special districts to assess costs.
- B. Dedication to Borough. Where a plan includes a proposed dedication of roads, neither the plan approval nor the developer's completion of the roads shall obligate the Council to accept the roads. Acceptance of a proposed dedication shall be a matter of discretion for the Council. If determined by the Council to be in the interest of the public health, safety and general welfare, the Council may accept roads and associated drainage facilities, but shall generally not accept any stormwater control facilities used to manage stormwater within any subdivision or land development, sewage disposal systems, water supply systems, sidewalks or other improvements unless the Council deems it necessary to fulfill the purposes of this chapter or the Borough's Official Wastewater Facilities Plan. In accepting any improvements, the Council may attach such reasonable conditions necessary to fulfill the purposes of this chapter.

§ 300-33. Open land and recreation land — ownership and maintenance.

This § 300-33 shall apply to any development which involves the ownership and maintenance of open land or recreation land held in common or owned and maintained through other arrangements approved by the Council (referred to as "common open space") as required by this chapter.

- A. Purpose. The requirements of this § 300-33 are intended to assure in perpetuity the ownership, use and maintenance of common open space. The general principle shall

be to assign ownership and maintenance responsibility to that entity which is best suited for the same and which will allocate any associated costs to the individuals which directly benefit from the use of the common open space.

- B. Plan and legal documents. The developer shall submit a plan and proposed legal documents for the purpose of dedicating, in perpetuity, the use, ownership and maintenance of the approved common open space. The plan shall be approved by the Council with the recommendation of the Borough Solicitor. The provisions of the approved plan shall be incorporated into a development agreement with the Borough, deed covenants and restrictions, or other legal document which will effect the plan and which can be enforced by the Council.
 - (1) The plan shall define ownership.
 - (2) The plan shall establish necessary regular and periodic operation and maintenance responsibilities for the various kinds of open space (i.e., lawns, playing fields, meadow, pasture, crop land, woodlands, etc.).
 - (3) The plan shall estimate staffing needs, insurance requirements and associated costs, and define the means for funding the maintenance of the conservation open space and operation of any common facilities on an ongoing basis. Such funding plan shall include the means for funding long-term capital improvements as well as regular yearly operating and maintenance costs.
 - (4) The Council may require the applicant to escrow sufficient funds for the maintenance and operation costs of common facilities for up to 18 months.
 - (5) Any changes to the maintenance plan shall be approved by the Council.
- C. Use restriction. The use of any common open space shall be limited to those uses which are specifically permitted or required by the applicable sections of this chapter and Chapter 400, Zoning.
- D. Development plan designations. The subdivision/land development plan which will be recorded following final approval of the development shall clearly show all common open space and specifically note the use, ownership and maintenance responsibility of the same. Reference to the legal document(s) governing the use, ownership and maintenance of common open space shall be noted on the plan. The plan shall also contain the following statement: "Common open land, common recreation land, common facilities and development improvements shall not be sold separately or be further subdivided or developed, nor shall such land be used for density for any other development."
- E. Methods for use dedication and common open space ownership and maintenance.
 - (1) The use of common open space and common open space ownership and maintenance shall be addressed by one or a combination of the methods which follow. In any case, the developer shall document to the satisfaction of the Council that the chosen method(s) will preserve the common open space use rights established in accord with this article and provide for the perpetual ownership and maintenance of all open land and recreation land.
 - (2) All methods shall establish a mechanism for the Council to effect the use

dedication and required operation and maintenance of common open space, if the means established by the developer fail to provide the same.

- (3) All methods for use dedication and common open space ownership and maintenance, and any combination of methods, and any change in method, which may be proposed by the ownership and maintenance entity, shall be subject to the approval of the Council. Operation and maintenance provisions shall include, but not be limited to, capital budgeting for repair and/or replacement of development improvements and common facilities, working capital, operating expenses, casualty and liability insurance, and contingencies.
 - (a) Property owners' association or condominium agreements. All common open space may be owned and maintained by a property owners' association (POA) or condominium agreements (CA), including all lot and/or condominium owners in the development, provided:
 - [1] The POA/CA is established by the developer as a nonprofit corporation for the express purpose of ownership and maintenance of the common open space or as otherwise may be required by state statute.
 - [2] Participation in the POA/CA is mandatory for all owners.
 - [3] Provision is made for the maintenance of common open space during the sale period and the orderly transition of responsibility from the developer to the POA/CA.
 - [4] The POA/CA is empowered to assess POA/CA members to fund the administration of the POA/CA and other costs associated with the common open space responsibilities.
 - (b) Transfer to a private conservation organization. In the case of open land and recreation land, the landowner may transfer fee simple title to the said areas, or parts thereof, to a private, nonprofit organization among whose purposes is the conservation of open land and/or natural resources, provided that:
 - [1] The deed contains the necessary covenants and restrictions in favor of the Borough to effect the use dedication and common open space ownership and maintenance standards of this article and this chapter.
 - [2] The organization proposed is a bona fide, operating, and stable conservation organization with a perpetual existence, as approved by the Council.
 - [3] The conveyance of title contains the necessary provisions for proper retransfer or reversion should the organization be unable to continue to execute the provisions of title.
 - [4] A maintenance agreement among the developer, organization and Borough is executed to the satisfaction of the Council.

- (c) Deed-restricted (noncommon) private ownership. Deed restrictions on privately held lands may be used to preserve open land, provided such restrictions include a conservation easement in favor of the Borough, with provisions for reversion to the Borough, POA or trustee holding the remainder of the common open space. Up to 80% of the required conservation open space may be included within one or more large conservancy lots of at least 10 acres, provided the open space is permanently restricted from future development through a conservation easement, except for those uses permitted for conservation open space by the Borough's Zoning Ordinance, and that the Council is given the ability to enforce these restrictions. Title to such restricted lands may be transferred to other parties for use as restricted by the deed.
 - (d) Deed or deeds of trust. The landowner may provide, as approved by the Council, for the use, ownership and maintenance of common open space by establishing a trust for the same via a deed or deeds. The trustee shall be empowered to levy and collect assessments from the property owners for the operation and maintenance of the development.
 - (e) Conservation easements held by the Borough. In the case of open lands and recreation lands, the Council may, but shall not be required to, accept title to conservation easements on any such lands. In such cases, the land remains in the ownership of an individual, POA/CA, while the development rights are held by the Borough. The lands may be used in accord with the requirements of this chapter, and title to such lands may be transferred to other parties for use as restricted by the conservation easement.
 - (f) Fee simple and/or easement dedication to the Borough. In the case of open lands or recreation lands, the Council may, but shall not be required to, accept in fee the title to any such lands or any interests (such as development rights or conservation easements) therein for public use and maintenance, provided:
 - (4) There is no consideration paid by the Borough.
 - (5) Such land is freely accessible to the public.
 - (6) The Council agrees to and has access to maintain such lands.
- F. Failure to preserve dedication of use and operation and maintenance of common open space. If the method established for the dedication of use, operation, and maintenance of common open space fails to do so in reasonable order and condition in accord with the approved development plan, the Council shall have the right and authority to take all necessary legal action to effect such use dedication, operation, and maintenance. The action of the Council shall be in accord with the following:
- (1) Notice. The Council shall serve written notice on the assigned entity or the property owners in the development, setting forth the details of the failure of the entity with regard to use dedication and operation and maintenance of common open space.

- (2) Correction of deficiencies. The notice shall include a demand that the deficiencies be corrected in a reasonable period of time, which shall be stated in the notice.
- (3) Public hearing. A public hearing shall be conducted subsequent to the notice and shall be advertised in accord with the definition of "public notice" contained in this chapter. At such hearing, the Council may modify the terms of the original notice as to the deficiencies and may extend the time for correction of the deficiencies.
- (4) Failure to correct. In the event the deficiencies in the notice, as may have been modified at the public hearing, are not corrected in accord with the established time period, the Council may enter upon the common open space and maintain the same and/or correct the deficiencies. The Council shall continue such action for such time as may be necessary to correct the deficiencies. Said action shall not constitute a taking or dedication of any common open space, nor vest in the public the right to use any common open space.
- (5) Reinstatement of responsibility. The responsibility of operation and maintenance shall not be reinstated to the assigned entity until such time as the entity has demonstrated to the Council that the proper steps have been effected to modify the terms of use dedication, operation and/or maintenance and/or to reorganize or replace the responsible entity so that use dedication, operation and maintenance established by the approved development plan will be assured.
- (6) Appeal. Any party to the action of the Council may appeal such action to court as provided for in the Pennsylvania Municipalities Planning Code, as amended.
- (7) Public costs. The costs of the preservation of use dedication, maintenance and operation of any open land conducted by the Borough in accord with this article, including any administrative and legal costs, shall be assessed ratably against the properties in the subject development which have a right of enjoyment and/or use of the common open space. The assessment shall be made a lien on the properties, and, the Council shall, at the time of the notice in § 300-33F(1) above, file the required notice of lien against the properties.

§ 300-34. Subdivision and/or land development improvements agreement.

All applicants proposing any subdivision and/or land development requiring the installation of improvements as required by this chapter shall, prior to final plan approval by the Council and if so directed by the Council, enter into a legally binding development agreement with the Borough whereby the developer guarantees the installation of the required improvements in accord with the approved plan and all Borough requirements.

- A. Contents. The development agreement shall be in a form suitable for execution by the Council and shall provide for the following, where applicable:
 - (1) The construction of all facilities authorized by the approved plans (streets, drainage, etc.) in itemized format.

- (2) Installation of survey monuments and lot markers.
 - (3) Installation of all water, sewer and utility lines.
 - (4) Prevention of erosion, sedimentation and water damage to the subject, adjacent and downstream properties.
 - (5) Developer's responsibility for any damages to adjacent or neighboring properties.
 - (6) A work schedule setting forth the beginning and ending dates and such other details as the Council deems fit and appropriate for improvements contained herein, including the timing of the development of any proposed sections.
 - (7) The estimated cost of the improvements not yet completed, including the amount of performance guarantee to be submitted.
 - (8) Security in the form of a construction guarantee approved by the Council to ensure the installation of the required improvements.
 - (9) Security in the form of a maintenance guarantee approved by the Council for the repair or reconstruction of improvements which are found by the Borough Engineer to be defective within 18 months from the date of formal acceptance of the said improvements, together with provisions for disbursement thereof.
 - (10) A set of reproducible "as-built" plans prepared by and certified to by a registered professional engineer and/or a registered professional surveyor of all roadways and streets, bridges, drainage systems, sewage collection and treatment systems, water distribution systems and all other required or provided improvements.
 - (11) Ownership of any improvements.
 - (12) Public liability insurance for the duration of improvements construction. A copy of the said policy or other evidence of coverage shall be submitted to the Council.
 - (13) A hold-harmless clause to protect the Borough from any and all liability.
 - (14) The developer's responsibility for all reasonable engineering and consulting costs and expenses for inspection, consultations and preparation of agreements, to the extent such costs and expenses exceed the monies paid by the developer in accordance with the standard fee schedules.
 - (15) Provisions for changing the approved final plan, supporting plans, profiles, data, specifications and related documents.
 - (16) Provisions for violations of the development agreement.
 - (17) Provisions for severability of any article.
 - (18) Provisions for any additional agreements deemed necessary.
- B. Execution. The final plan shall not be approved by the Council prior to the execution of this agreement if so required by the Council.

ARTICLE VI
Design Standards and Specifications

§ 300-35. General design standards; Borough zoning requirements.

In addition to the standards in this Article VI, residential subdivisions and land developments shall be designed in accord with the applicable requirements of Chapter 400, Zoning.

- A. Application. The standards and requirements contained in this article shall apply to all subdivisions and land developments and are intended as the minimum for the preservation of the environment and promotion of the public health, safety and general welfare and shall be applied as such by the Borough Planning Commission in reviewing and evaluating plans for all proposed subdivisions and/or land developments. Compliance with all standards shall be documented by the applicant at the time of preliminary plan application.
- (1) Planning. The development shall conform to the proposals and conditions shown in the Borough Comprehensive Plan and any local or regional plans adopted by the municipality to which this chapter applies. The streets, drainage, rights-of-way, school sites, public parks and playgrounds shown on the officially adopted Comprehensive Plan or Official Map shall be considered in the approval of all plans. In the case of major subdivisions and land developments, the applicant shall submit a narrative detailing how the development conforms to any applicable plan.
 - (2) Contiguous lands. Where the owner of the site under consideration owns contiguous land suitable for development, the subdivision plan shall cover all such contiguous lands. This provision, however, may be waived in full, or in part, by the Borough if it is not considered essential to the evaluation of the plans for the current development tract; provided, however, that the developer shall be required to submit not less than a prospective street layout and a topographic map of the contiguous lands at a scale of one inch equals 200 feet regardless of any such waiver.
 - (3) Improvements, specifications. Additional improvements or improvements of more stringent specifications may be required in specific cases where, in the opinion of the Borough, such specifications are necessary to create conditions essential to the health, safety and general welfare of the citizens of the Borough and/or to protect the environment of the Borough.
 - (4) Hazard areas. Those areas which may present such hazards to life, health or property as may arise from fire, flood or noise or are considered to be uninhabitable for other reasons shall not be subdivided for building purposes unless the hazards have been eliminated or the plans show adequate safeguards against the hazards. Sources for determining and evaluating potential hazards may include historical records, soil evaluations, engineering studies, expert opinions, standards used by licensed insurance companies and adopted regional, county or local municipal policies.
 - (5) Development design, neighboring development. All portions of a tract being

subdivided shall be taken up in lots, streets, open lands, or other proposed uses, so that remnants and landlocked areas shall not be created. The layout of a subdivision shall also be planned with consideration for existing nearby developments or neighborhoods so that they are coordinated in terms of interconnection of open space, traffic movement, drainage and other reasonable considerations.

- (6) Natural features. Care shall be taken to preserve natural features, such as agricultural land, woodland and specimen trees, wetlands, watercourses and views, and historical features, such as buildings and stone walls, which will maintain the attractiveness and value of the land. Damming, filling, relocating or otherwise interfering with the natural flow of surface water along any surface water drainage channel or natural watercourse shall not be permitted except with the approval of the Borough and, where appropriate, the local municipality, the Pennsylvania Department of Environmental Protection and the United States Army Corps of Engineers.
 - (a) Groundwater resources. This section is intended to ensure that the Borough's limited groundwater resources are protected for purposes of providing water supplies for its residents and businesses and to protect the base flow of surface waters. These regulations shall be applied in conjunction with those provided for in other sections of this chapter dealing with groundwater conservation and replenishment. The proposed subdivision and land development of any tract shall be designed to cause the least practicable disturbance to natural infiltration and percolation of precipitation to the groundwater table, through careful planning of vegetation and land disturbance activities, the use of bioretention areas and infiltration trenches, and the placement of streets, buildings and other impervious surfaces in locations other than those identified on the existing resources and site analysis plan as having the greatest permeability where precipitation is most likely to infiltrate and recharge the groundwater.
 - (b) Stream valleys, swales, springs and other lowland areas. Stream valleys (which include stream channels and floodplains), swales, springs and other lowland areas are resources that warrant restrictive land use controls because of flooding hazards to human life and property, groundwater recharge functions, importance to water quality and the health of aquatic communities and wildlife habitats. Such areas are generally poorly suited for on-site subsurface sewage disposal systems. The following activities shall be minimized:
 - [1] Disturbance to streams and drainage swales.
 - [2] Disturbance to year-round wetlands, areas with seasonally high water tables, and areas of surface water concentration.
 - [3] Because of extreme limitations, stream valleys, swales and other lowland areas warrant designation as conservation open space. They may also require adjoining buffer lands to be included in the conservation open space, to be determined by an analysis of the

protection requirements of such areas on a case-by-case basis. In certain instances, seasonal high water table soils may be excluded from the conservation open space where it can be demonstrated that they are suitable for low-density residential uses and on-site sewage systems.

- (c) Woodlands. Woodlands occur extensively throughout the Borough, often in association with stream valleys and wet areas, poor and erodible agricultural soils, and moderate to steep slopes.

[1] Woodland conditions within the Borough vary with respect to species composition, age, stocking and health. They range from relatively recent post-agricultural young stands to mature mixed-age forests. Most woodlands in the Borough represent one or more of the following resource values:

- [a] As soil stabilizers, particularly on moderate to steep slopes, thereby controlling erosion into nearby streams, ponds, impoundments and roads. A closely related function is their enhancement of groundwater recharge.
- [b] As a means of ameliorating harsh micro-climatic conditions in both summer and winter.
- [c] As a source of wood products, i.e., poles, saw timber, veneer and firewood.
- [d] As habitats for woodland birds, mammals and other wildlife.
- [e] As recreation resources for walkers, equestrians, picnickers and other related outdoor activities.
- [f] As visual buffers between areas of development and adjacent roads and properties.

[2] Because of their resource values, all woodlands on any tract proposed for subdivision or land development shall be evaluated by the applicant to determine the extent to which such woodlands should be designated partly or entirely as open lands or development lands. Evaluation criteria shall include:

- [a] Configuration and size.
- [b] Present conditions, i.e., stocking, health and species composition.
- [c] Site potential, i.e., the site's capabilities to support woodlands, based upon its topographic, soil and hydrologic characteristics.
- [d] Ecological functions: i.e., in protecting steep slopes, erodible soils, maintaining stream quality and providing for wildlife habitats.
- [e] Relationship to woodlands on adjoining and nearby properties

and the potential for maintaining continuous woodland areas.

- (d) Slopes. Moderately sloping lands (15% to 25%) and steeply sloping lands (over 25%) are prone to severe erosion if disturbed. Erosion and the resulting overland flow of soil sediments into streams, ponds and public roads are detrimental to water quality and aquatic life and a potential hazard to public safety. Areas of steep slope shall be governed by § 400-31 of Chapter 400, Zoning and the following:
 - [1] All grading and earthmoving on slopes exceeding 15% shall be minimized.
 - [2] No site disturbance shall be allowed on slopes exceeding 25%, except grading for a portion of a driveway accessing a single-family dwelling when it can be demonstrated that no other routing which avoids slopes exceeding 25% is feasible.
 - [3] Roads and driveways shall follow the line of existing topography to minimize the required cut and fill. Finished slopes of all cuts and fills shall be as required to minimize disturbance of natural grades.
- (e) Significant natural areas and features. Natural areas containing rare or endangered plants and animals, as well as other features of natural significance exist throughout the Borough. Some of these have been carefully documented, e.g., by the Statewide Natural Diversity Inventory, whereas for others only the general locations are known. Subdivision applicants shall take all reasonable measures to protect significant natural areas and features either identified by the Borough's Map of Potential Conservation Lands or by the applicant's existing resources and site analysis plan by incorporating them into proposed conservation open space areas or avoiding their disturbance in areas proposed for development.
- (7) Historic structures and sites. The Borough's documented historical resources begin with the Native Americans in the early 18th century and extend through its colonial agricultural, residential and industrial development in the late 18th and 19th centuries. Plans requiring subdivision and land development approval shall be designed to protect existing historic resources. The protection of an existing historic resource shall include the conservation of the landscape immediately associated with and significant to that resource to preserve its historic context. Where, in the opinion of the Commission, a plan will have an impact upon a historic resource, the developer shall mitigate that impact to the satisfaction of the Commission by modifying the design, relocating proposed lot lines, providing landscape buffers, or other approved means. Borough participation, review and approval of the applicant's interaction with the State Historical and Museum Commission with regard to the preservation of historic resources, as required for DEP approval of proposed sewage disposal systems, shall be required prior to preliminary plan approval.
- (8) Boundary lines and reserve strips. Lot lines should follow municipal and county boundary lines, rather than cross them. Reserve strips controlling access to lots, public rights-of-way, public lands or adjacent private lands are

prohibited.

- (9) Trails. When a subdivision or land development proposal is traversed by or abuts an existing trail customarily used by pedestrians and/or equestrians, the Borough may require the applicant to make provisions for continued recreational use of the trail.
 - (a) The applicant may alter the course of the trail within the tract for which development is proposed under the following conditions:
 - [1] The points at which the trail enters and exits the tract remain unchanged.
 - [2] The proposed alteration exhibits quality trail design according to generally accepted principles of landscape architecture. (For example: Bureau of State Parks' publication "Non-Motorized Trails.")
 - [3] The proposed alteration does not coincide with a paved road intended for use by motorized vehicles.
 - (b) When trails are intended for public or private use, they shall be protected by a permanent conservation easement on the properties on which they are located. The width of the protected area in which the trail is located should be a minimum of 10 feet. The language of the conservation easement shall be to the satisfaction of the Borough upon recommendation of the Borough Solicitor.
 - (c) The land area permanently designated for trails for public use may be credited toward the open land requirement of Chapter 400, Zoning.
 - (d) An applicant may propose and develop a new trail. If said trail is available for use by the general public and connects with an existing trail, the land area protected for said trail may be credited toward the open space requirement of Chapter 400, Zoning.
 - (e) Trail improvements shall demonstrate adherence to principles of quality trail design in accord with specifications approved by the Borough.
 - (f) Trails shall have a vertical clearance of no less than 10 feet.
 - (g) Width of the trail surface may vary depending upon type of use to be accommodated, but in no case shall be less than three feet or greater than six feet.
 - (h) No trail shall be designed with the intent to accommodate motorized vehicles.
- (10) Water frontage and surface drainage. The damming, filling, relocating or otherwise interfering with the natural flow of surface water along any surface water drainage channel or natural watercourse shall not be permitted except with approval of the Borough and, where required by state statute, the Pennsylvania Department of Environmental Protection or other applicable

state agencies.

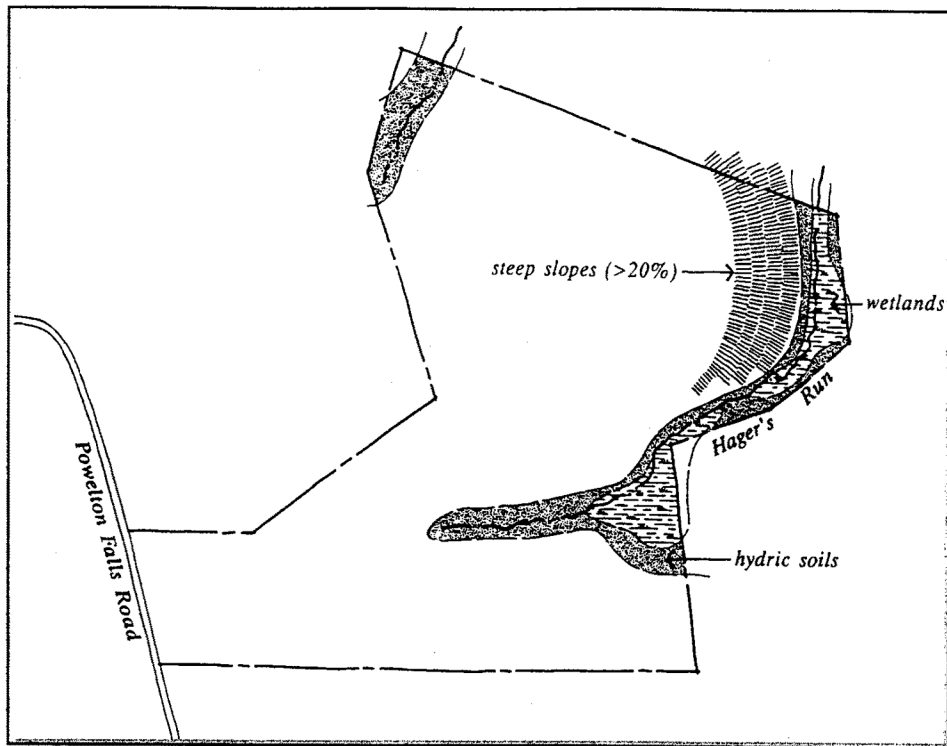
- (11) Community facilities and Comprehensive Plan requirements. Where a proposed park, playground, school or other public use is shown in the Borough Comprehensive Plan and is located in whole or in part in a proposed development, the Borough may require the reservation of such area, provided that such reservation is acceptable to the Borough and the developer.
 - (12) Walkways. Pedestrian interior walks may be required where necessary to assist circulation or provide access to community facilities (such as a school).
 - (13) Storm drainage. Lots and/or parcels shall be laid out and graded to provide positive drainage away from buildings and to prevent damage to neighboring lots, tracts or parcels. Where applicable, detention basins or other water retention methods may be required by the Borough.
- B. Planned improvements. Physical improvements to the property being subdivided and/or developed shall be provided, constructed and installed as shown on the record plan.
- C. Improvements specifications. All improvements installed by the developer shall be constructed in accordance with the design specifications and construction standards of the Borough and advice of the Borough Engineer.
- (1) Where there are no applicable Borough specifications, improvements shall be constructed in accordance with specifications furnished by the Borough Engineer, Lackawanna County, Pennsylvania Department of Transportation, Pennsylvania Department of Environmental Protection, Bureau of Forestry or such other county, state or federal agency as may be applicable.
 - (2) If there are no applicable Borough or state regulations, the Borough Planning Commission may authorize that such specifications be prepared by the Borough Engineer or an engineering consultant.
- D. Other ordinances. Whenever other Borough ordinances and/or regulations impose more restrictive standards and requirements than those contained herein, such other ordinances and/or regulations shall be observed, otherwise the standards and requirements of this chapter shall apply.

§ 300-36. Four-step design process for conservation design subdivisions and developments.

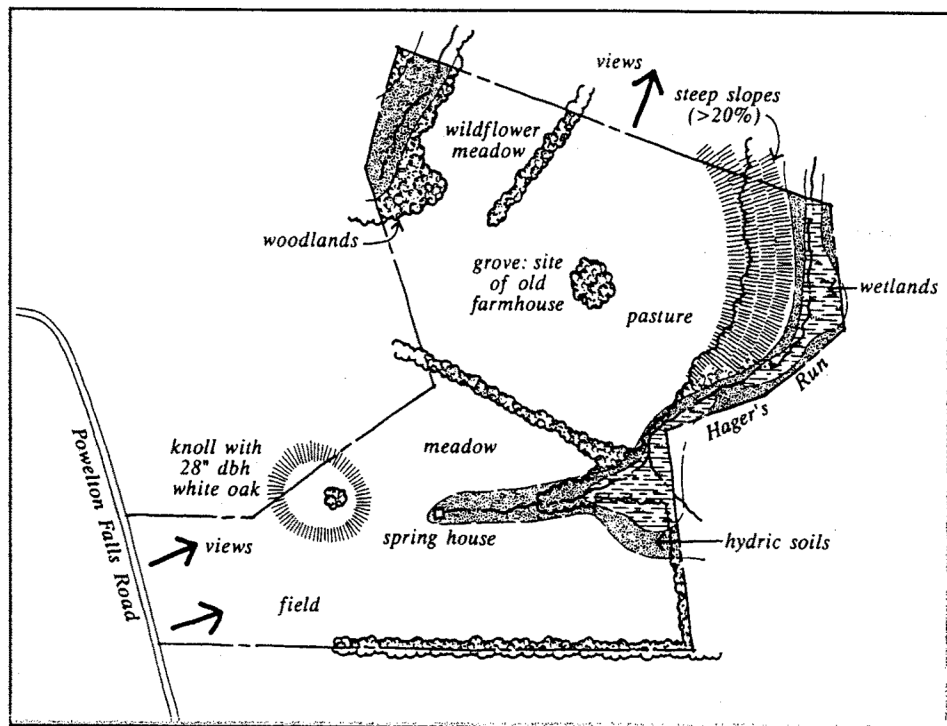
All preliminary plans for a conservation design development shall include documentation of a four-step design process in determining the layout of proposed conservation open space, house and development sites, streets and lot lines, as described below.

- A. Resource inventory and analysis. The tract's resources shall be delineated on an existing resources and site analysis plan, as required in § 300-21D.
- B. Four-step design process.
- (1) Step 1: Delineation of Conservation Open Space.

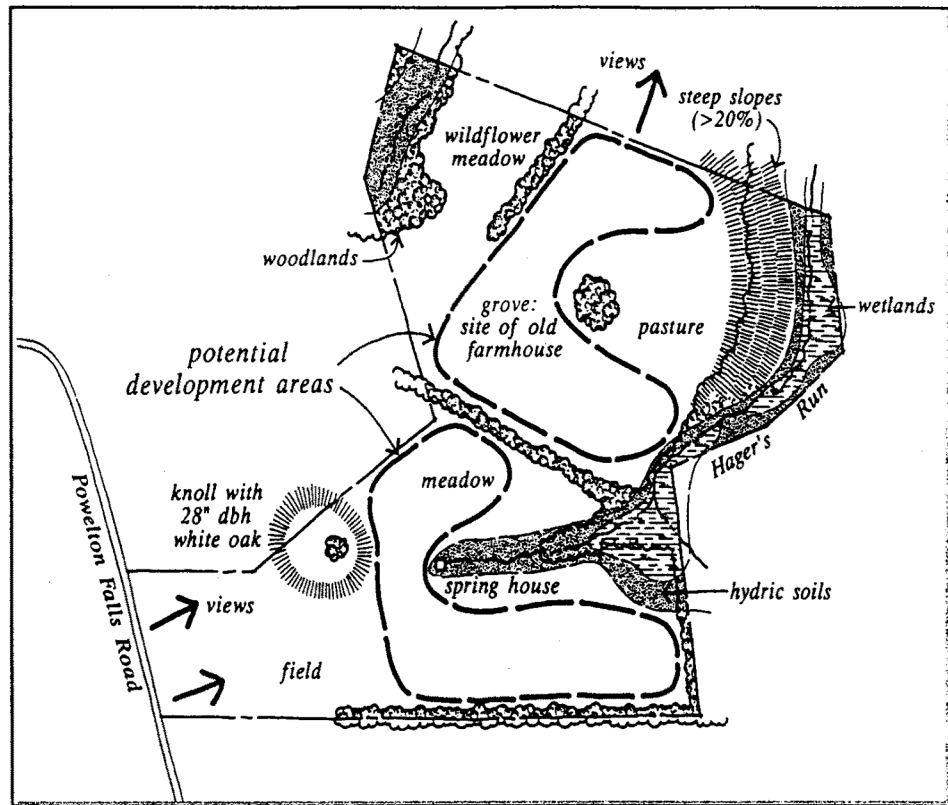
- (a) The minimum percentage and acreage of required conservation open space shall be calculated by the applicant and submitted as part of the sketch plan or preliminary plan in accord with the provisions of this chapter and § 400-19 of Chapter 400, Zoning. Conservation open space shall include all primary conservation areas and those parts of the remaining buildable lands with the highest resource significance, as described below and in § 300-37A and B.
- (b) Proposed conservation open space shall be designated using the existing resources and site analysis plan as a base map and complying with § 400-19 of Chapter 400, Zoning and §§ 300-36 and 300-37, dealing with resource conservation and conservation open space delineation standards. The Borough's Map of Potential Conservation Lands shall also be referenced and considered. Primary conservation areas shall be delineated, comprising floodplains, wetlands and slopes over 25%.
- (c) In delineating secondary conservation areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to least suitability for inclusion in the proposed conservation open space, in consultation with the Planning Commission and in accordance with § 300-37A and B.



Step 1, Part 1 - Identifying Primary Conservation Areas

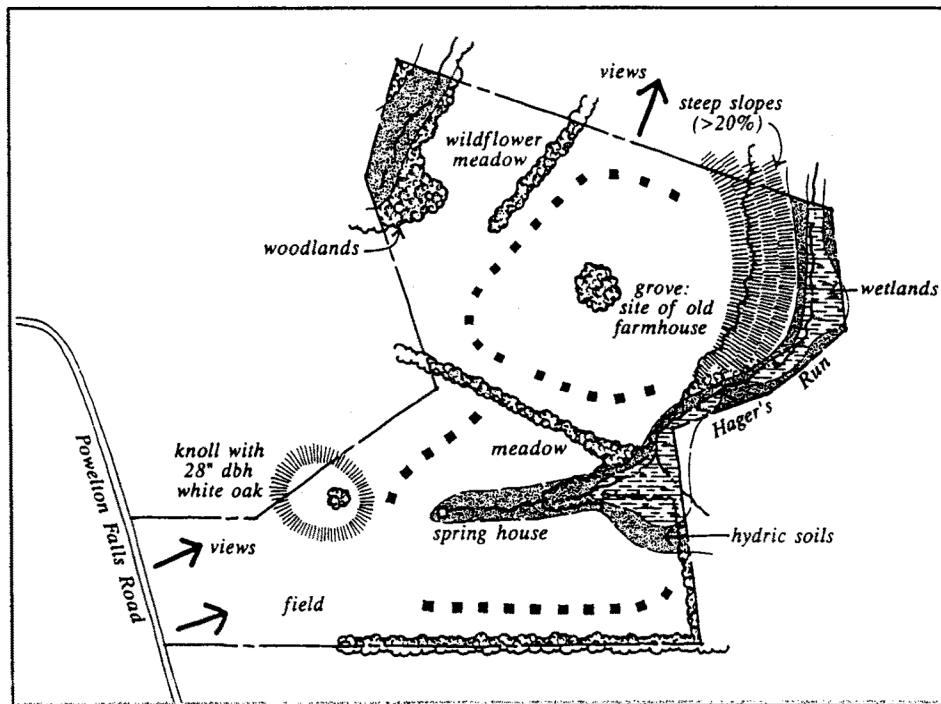


Step 1, Part 2 - Identifying Secondary Conservation Areas



Step 1, Part 3 - Identifying Potential Development Areas

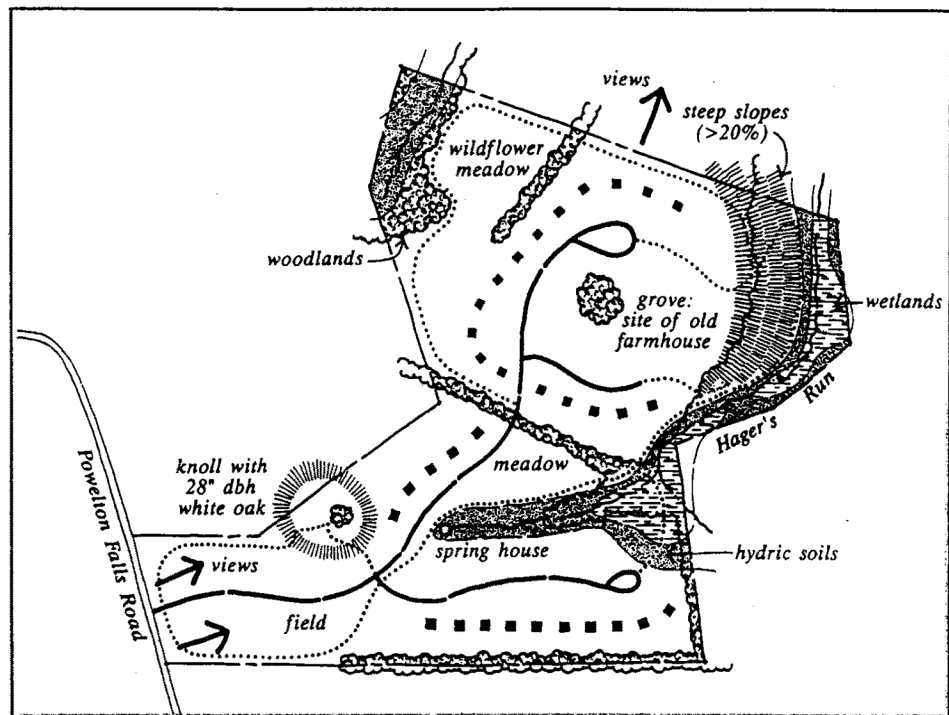
- (d) On the basis of those priorities and practical considerations given to the tract's configuration, its context in relation to resources areas on adjoining and neighboring properties, and the applicant's subdivision objectives, secondary conservation areas shall be delineated to meet at least the minimum area percentage requirements for conservation open space and in a manner clearly indicating their boundaries as well as the types of resources included within them.
 - (e) Development areas constitute the remaining lands of the tract outside of the designated open space areas.
- (2) Step 2: Location of House Sites. Potential house sites shall be located, using the proposed conservation open space as a base map as well as other relevant data on the existing resources and site analysis plan such as topography and soils. House sites should generally be located not closer than 100 feet to primary conservation areas and 50 feet to secondary conservation areas, taking into consideration the potential negative impacts of residential development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual settings for residences.



Step 2 - Locating Potential House Sites

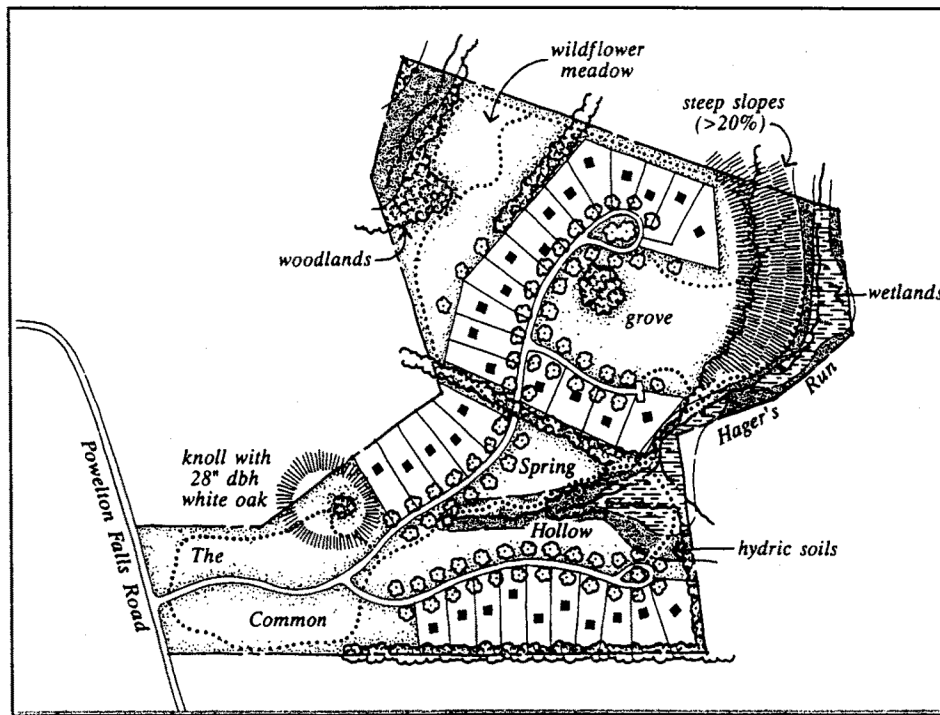
(3) Step 3: Alignment of Streets and Trails.

- (a) With house site locations identified, applicants shall delineate a street system to provide vehicular access to each house in a manner conforming to the tract's natural topography and providing for a safe pattern of circulation and ingress and egress to and from the tract.
- (b) Streets shall avoid or at least minimize adverse impacts on the conservation open space areas. To the greatest extent practicable, wetland crossings and new streets or driveways traversing slopes over 15% shall be avoided.
- (c) Street connections shall generally be encouraged to minimize the number of new culs-de-sac and to facilitate easy access to and from homes in different parts of the tract and on adjoining parcels.
- (d) A tentative network of trails shall also be shown, connecting streets with various natural and cultural features in the conserved conservation open space. Potential trail connections to adjacent parcels shall also be shown in areas where a municipal trail network is envisioned.



Step 3 - Aligning Streets and Trail Links

- (4) Step 4: Drawing in the Lot/Development Lines. Upon completion of the preceding three steps, boundaries are drawn as required to delineate the boundaries of individual lots or development areas, following the configuration of house sites and streets in a logical and flexible manner.



Step 4 - Drawing in the Lot/Development Lines

§ 300-37. Conservation open space design review standards for conservation subdivisions.

Conservation open space in conservation design subdivisions and developments shall be preserved in accord with § 300-33 of this chapter and Chapter 400, Zoning, and not less than 25% of the conservation open space shall be accessible to the residents of the subdivision or land development.

- A. Prioritized list of resources to be conserved. The design of conservation open space in any subdivision or land development plan shall reflect the standards set forth in § 300-35, resources identified on the Map of Potential Conservation Lands and, to the fullest extent possible, incorporate any of the following resources if they occur on the tract (listed in order of significance):
- (1) Stream channels, floodplains, wet soils, swales, springs and other lowland areas, including adjacent buffer areas which may be required to ensure their protection.
 - (2) Significant natural areas of species listed as endangered, threatened or of special concern, such as those listed in the Statewide Natural Diversity Inventory.
 - (3) Moderate to steep slopes, particularly those adjoining watercourses and ponds, where disturbance and resulting soil erosion and sedimentation could be detrimental to water quality.
 - (4) Healthy woodlands, particularly those performing important ecological

functions such as soil stabilization and protection of streams, wetlands and wildlife habitats.

- (5) Areas where precipitation is most likely to recharge local groundwater resources because of topographic and soil conditions affording high rates of infiltration and percolation.
 - (6) Hedgerows, groups of trees, large individual trees of botanic significance, and other vegetational features representing the site's rural past.
 - (7) Class I, II and III agricultural soils as defined by the United States Department of Agriculture Natural Resources Conservation Service.
 - (8) Historic structures and sites.
 - (9) Visually prominent topographic features such as knolls, hilltops and ridges, and scenic viewsheds as seen from public roads (particularly those with historic features).
 - (10) Existing trails connecting the tract to other locations in the municipality.
- B. Other design considerations. The configuration of proposed conservation open space set aside for common use in residential subdivisions and conservation open space in noncommon ownership shall comply with the following standards. Conservation open space shall:
- (1) Be free of all structures except historic buildings, stone walls, and structures related to conservation open space uses. The governing body may grant approval of structures and improvements required for storm drainage, sewage treatment and water supply within the conservation open space, provided that such facilities would not be detrimental to the conservation open space (and that the acreage of lands required for such uses is not credited towards minimum conservation open space acreage requirements for the tract, unless the land they occupy is appropriate for passive recreational use).
 - (2) Generally not include parcels smaller than three acres, have a length-to-width ratio of less than 4:1, or be less than 75 feet in width, except for such lands specifically designed as neighborhood greens, playing fields or trail links.
 - (3) Be directly accessible to the largest practicable number of lots within the subdivision. Nonadjoining lots shall be provided with safe and convenient pedestrian access to conservation open space.
 - (4) Be suitable for active recreational uses to the extent deemed necessary by the governing body, without interfering with adjacent dwelling units, parking, driveways and roads.
 - (5) Be interconnected wherever possible to provide a continuous network of conservation open space within and adjoining the subdivision.
 - (6) Provide buffers to adjoining parks, preserves or other protected lands.
 - (7) Except in those cases where part of the conservation open space is located within private house lots, provide for pedestrian pathways for use by the

residents of the subdivision. Provisions should be made for access to the conservation open space, as required for land management and emergency purposes.

- (8) Be undivided by public or private streets, except where necessary for proper traffic circulation.
- (9) Be suitably landscaped either by retaining existing natural cover and wooded areas and/or according to a landscaping plan to protect conservation open space resources.
- (10) Be made subject to such agreement with the Borough and such conservation easements duly recorded in the office of the County Recorder of Deeds as may be required by the Planning Commission for the purpose of preserving the common open space for such uses.
- (11) Be consistent with the municipality's Comprehensive Plan.

§ 300-38. Resource conservation standards for site preparation and cleanup.

- A. Protection of vegetation from mechanical injury. Where earthwork, grading or construction activities will take place in or adjacent to woodlands, old fields or other significant vegetation or site features, the Planning Commission may require that the limit of disturbance be delineated and vegetation protected through installation of temporary fencing or other approved measures. Such fencing shall be installed prior to commencing of and shall be maintained throughout the period of construction activity.
- B. Protection of vegetation from grading change. Grade changes to occur at any location of the property shall not result in an alteration to soil or drainage conditions which would adversely affect existing vegetation to be retained following site disturbance, unless adequate provisions are made to protect such vegetation and its root systems.
- C. Protection of vegetation from excavations. When digging trenches for utility lines or similar uses, disturbances to the root zones of all woody vegetation shall be minimized. If trenches must be excavated in the root zone, all disturbed roots shall be cut as cleanly as possible. The trench shall be backfilled as quickly as possible.
- D. Protection of topsoil.
 - (1) No topsoil shall be removed from the site. In the case of a nonresidential development, topsoil shall be retained on the site as necessary for proper site stabilization.
 - (2) Prior to grading operations or excavation, topsoil in the area to be disturbed shall be removed and stored on site.
 - (3) Topsoil removed shall be redistributed and stabilized as quickly as possible following the establishment of required grades for a project or project phase. All exposed earth surfaces shall be stabilized by hydroseeding on slopes of less than 10% and by sodding, hydroseeding, or riprap on slopes exceeding 10%.

- (4) Grading and earthmoving operations shall be scheduled to minimize site disturbance during the period from November 1 to April 1, when revegetation of exposed ground is difficult.

§ 300-39. Blocks and lots.

- A. Configuration. The configuration of blocks and lots shall be based upon the lot area requirements, the salient natural features, open land requirements, the existing man-made features, and the proposed type of structure. Lot configurations should provide for flexibility in building locations, while providing safe vehicular and pedestrian circulation.
- B. Blocks.
 - (1) Residential blocks shall have a maximum length to serve not more than 25 lots.
 - (2) Commercial blocks shall have a maximum length of 1,000 feet.
 - (3) Blocks shall be of sufficient width to permit two tiers of lots except where a public street, stream, other natural barrier or unsubdivided land prevents the platting of two tiers of lots.
 - (4) To facilitate pedestrian movement through the neighborhood, mid-block pedestrian connections shall be provided on blocks longer than 800 feet.
- C. Lots.
 - (1) Lot sizes and dimensions shall comply with the requirements of Chapter 400, Zoning.
 - (2) Lots divided by municipal boundaries shall be avoided. Where a subdivision is divided by a municipal boundary, the applicant shall so notify the Planning Commission of each Borough affected so that an administrative agreement for the platting and taxing of lots between the Boroughs can be executed, if such agreement is necessary.
 - (3) All lots shall front on an approved street. Flag lots shall be permitted only by waiver/modification in accord with § 300-77 for flexibility of design, to accommodate odd-shaped tracts, and to minimize impacts on natural and historic resources.
 - (4) All side lines of lots shall be as near as possible at right angles to straight street lines and radial to curved street lines.
 - (5) In order to minimize the number of driveways or subdivision road accesses to a public road, access to the abutting public road shall be limited to one access per 500 feet of road frontage.
 - (6) Double frontage lots shall not be platted. Access to lots shall be restricted to the interior development streets, unless no other reasonable design alternative is possible.
 - (7) All lands in a subdivision shall be included in platted lots, roads, common

areas and other improvements, and no remnants of land or reserve strips controlling access to lots, public rights-of-way, public lands or adjacent private lands shall be permitted.

- (8) Lots shall be laid out to the edge of any road, and lot lines along existing public or private roads shall be maintained as they exist.
- (9) No corner lot shall have road frontage of less than 100 feet.
- (10) All corner lots, if they are located at the intersection of the rights-of-way of two streets, shall have a curve with a minimum radius of 10 feet adjoining the intersecting road edge or right-of-way lines.

§ 300-40. Streets/roads.

A. Applicability.

- (1) Every subdivision and land development shall have access to a public road.
- (2) In general, all streets shall be continuous and in alignment with existing streets and shall compose a convenient system to ensure circulation of vehicular and pedestrian traffic, with the exception that minor streets shall be laid out including the use of loop streets and culs-de-sac so that their use by through traffic will be discouraged.
- (3) Roads shall be graded, improved and surfaced to the grades and specifications shown on the plans, profiles and cross sections as approved by the Borough.
- (4) Proposed streets shall conform in all respects to the Borough Comprehensive Plan.
- (5) Proposed streets shall further conform to such county and state highway plans as have been prepared, adopted and/or filed as prescribed by law and to the requirements of a general plan of the area as developed by the Borough.

B. Topography. Roads shall be logically related to topography to produce reasonable grades, minimize stormwater runoff and provide suitable building sites.

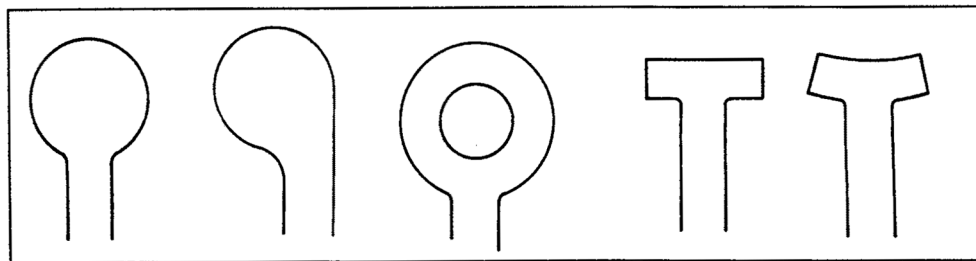
C. Existing access. Existing private roads or rights-of-way proposed to provide access to a subdivision and/or land development shall meet all the requirements of this § 300-40 or shall otherwise be improved to such standards.

D. Street continuation. Residential streets shall be planned to discourage through traffic; however, the arrangement of streets wherever possible shall provide for continuation of existing or platted streets and for adequate access to adjoining undeveloped tracts suitable for future subdivision by reserving rights-of-way to the adjoining undeveloped tracts.

E. Subdivision names and street names. Streets that are extensions of, or obviously in alignment with, existing streets shall bear the names of the existing streets. Subdivision and street names shall not be repeated or be similar to those existing within the Borough or adjacent areas, and all street names shall be subject to the approval of the Borough for conformance with the 911 emergency call system.

Four-way street name signs of a design approved by the Borough shall be installed by the developer at his expense at each street intersection.

- F. Further subdivision. If lots resulting from original subdivision are large enough to permit resubdivision, or if a portion of the tract is not subdivided, adequate street rights-of-way to permit further subdivision shall be provided as necessary. At least one right-of-way shall be reserved for each 1,600 feet of frontage on a public road or on a collector street within the subdivision in order to provide access to undeveloped land.
- G. Cul-de-sac streets. Cul-de-sac streets shall be permitted only in cases where the property configuration does not permit the logical use of continuous streets, and the Borough shall have the right to deny the use of cul-de-sac streets in cases where the Borough determines that the use of continuous streets is practical. Cul-de-sac streets, where permitted, shall meet the following design regulations:
 - (1) Any temporary dead-end street, if designed to provide future access to adjoining properties, shall be provided with a temporary all-weather turn-around within the subdivision with a surfaced area with a radius equal to that required for a permanent turnaround, and the use of such turnaround shall be guaranteed to the public but shall be removed when the street is extended.
 - (2) Cul-de-sac streets, permanently designed as such, shall not serve more than 25 lots and shall not exceed a length of 800 feet.
 - (3) All cul-de-sac streets, whether permanently or temporarily designed as such, shall terminate in a turnaround. See illustrations.



Cul-de-Sac Turnarounds

- (a) In cases where the cul-de-sac serves more than 10 dwelling units and/or dedication to the Borough is proposed, one of the following turnarounds shall be provided:
 - [1] A circular turnaround or off-center circular turnaround having a right-of-way with a minimum outside radius of 40 feet and an outer pavement edge or curbline having a minimum radius of 30 feet and be improved to the required construction specifications.
 - [2] A circular turnaround with a center island having a right-of-way with a minimum outside radius of 55 feet and an outer pavement edge or curbline having a minimum radius of 45 feet, and a pavement width of 20 feet, improved to the required construction

specifications. The center island shall be landscaped with low-maintenance vegetation.

- (b) In cases where the turnaround serves 10 or less dwelling units and the street will remain private, the turnaround may be T- or Y-shaped, with a length of 60 feet and a width of 20 feet improved to the required construction specifications.
 - (4) The turnaround right-of-way of the cul-de-sac shall be connected to the approach right-of-way by an arc having a radius of not less than 25 feet and to the pavement by an arc of not less than 30 feet.
 - (5) When the Planning Commission determines that a cul-de-sac street may be required to be converted to a through street to provide access to adjoining property, a right-of-way equal to the width of the cul-de-sac street shall be provided to the perimeter boundary of the development parcel.
 - (6) As an alternative to a cul-de-sac street, the Borough may permit a one-way loop lane with a midway length not to exceed 800 feet and with a center median not less than 50 feet in width.
- H. Private access streets. Private access streets may be used to provide access to residential lots which do not front on a public or approved private road in accord with the following:
- (1) The private access street serves no more than three lots, including that lot fronting on the abutting street, and shall not exceed 1,000 feet in length. Any subdivision proposing a road exceeding these limits shall be considered a major subdivision, and all applicable standards shall apply to the lots and road construction.
 - (2) Private access.
 - (a) The private access street shall conform to the following: (See also Table VI-1 and Table VI-2.)
 - [1] Minimum total right-of-way width: 25 feet.
 - [2] Minimum travelway: 16 feet.
 - (b) The width of the private access street shall be excluded from the lot dimension for purposes of conformance to lot width and lot depth requirements.
 - (3) A private access street may be used only to provide access to not more than three lots that cannot legally be further subdivided or improved with more than one dwelling unit, except in full accord with Borough requirements.
 - (4) If there is a potential for resubdivision of any of the lots created, such that eventually more than three lots might result, the applicant shall provide additional street width as necessary to serve the maximum potential number of lots. Cartway and travelway widths may remain the same until such time as additional lots are platted, when all development and road standards applicable

to a major subdivision shall apply.

- (5) The private access street and entrances or aprons within the adjoining street right-of-way shall be installed or guaranteed by the developer and/or applicant as required in this chapter prior to final approval of the plan. The private access street and associated improvements shall not under any circumstances be offered to the Borough as a municipal road. The applicant shall agree to the terms of this § 300-40H in writing, and a covenant shall be placed on the final plan and the deed of conveyance, clearly assigning responsibility for construction and maintenance of the private access street and establishing its future private ownership status.
- (6) A leveling area not exceeding 4% in grade and not less than 40 feet in length shall be provided where the private access street intersects with the right-of-way of the adjoining road.
- (7) The tangent grade of the through street at the point of intersection of the center lines of the two streets shall not exceed 8% for the private access street intersection, and all other intersections shall comply with the grades as required on Table VI-1. Crest and sag vertical curves shall be provided in accordance with § 300-40O.

I. Intersections.

- (1) Center lines of streets shall intersect as nearly at right angles as possible.
 - (a) Any center-line angle of less than 80° shall be allowed only upon grant of a waiver by the Borough, based upon a written request by the developer.
 - (b) Center-line angles of less than 60° shall not be approved under any condition.
- (2) Intersections of more than two streets at one point are not permitted.
- (3) Where streets intersect other streets, the minimum offset or distance between center lines of parallel or approximately parallel streets intersecting a cross street from opposite directions shall be as follows:
 - (a) Minor streets: 150 feet
 - (b) Collector streets: 400 feet.
- (4) The cartway edge at intersections shall be rounded by a tangential arc with a minimum radius of 20 feet for minor streets or streets of lesser classification and 50 feet for collector streets and Borough or state roads.

J. Major street frontage. Where a subdivision and/or land development abuts or contains an existing or proposed collector street or Borough or state road, the Borough may require access from interior subdivision streets or such other treatment as will provide protection for abutting properties, reduction in number of intersections with the collector or public street and separation of local and through traffic.

K. Street right-of-way, travelway, shoulder widths, and cross sections. Street right-of-

way, travelway and shoulder widths shall be provided to the minimum standards provided in Table VI-1 and Table VI-2.

- (1) Shoulder surfaces shall be graded at a slope of 1/2 inch per foot away from the pavement edge.
- (2) The finished paved travelway surface of tangent sections and curve sections not required to be superelevated shall be crowned at 1/4 inch per foot away from the center line.
- (3) Properly superelevated cross sections shall be required on collector streets when the curve radii are less than 1,500 feet. The maximum permissible superelevation shall be 0.08 feet per foot.

Table VI-1

Design Standards for Streets

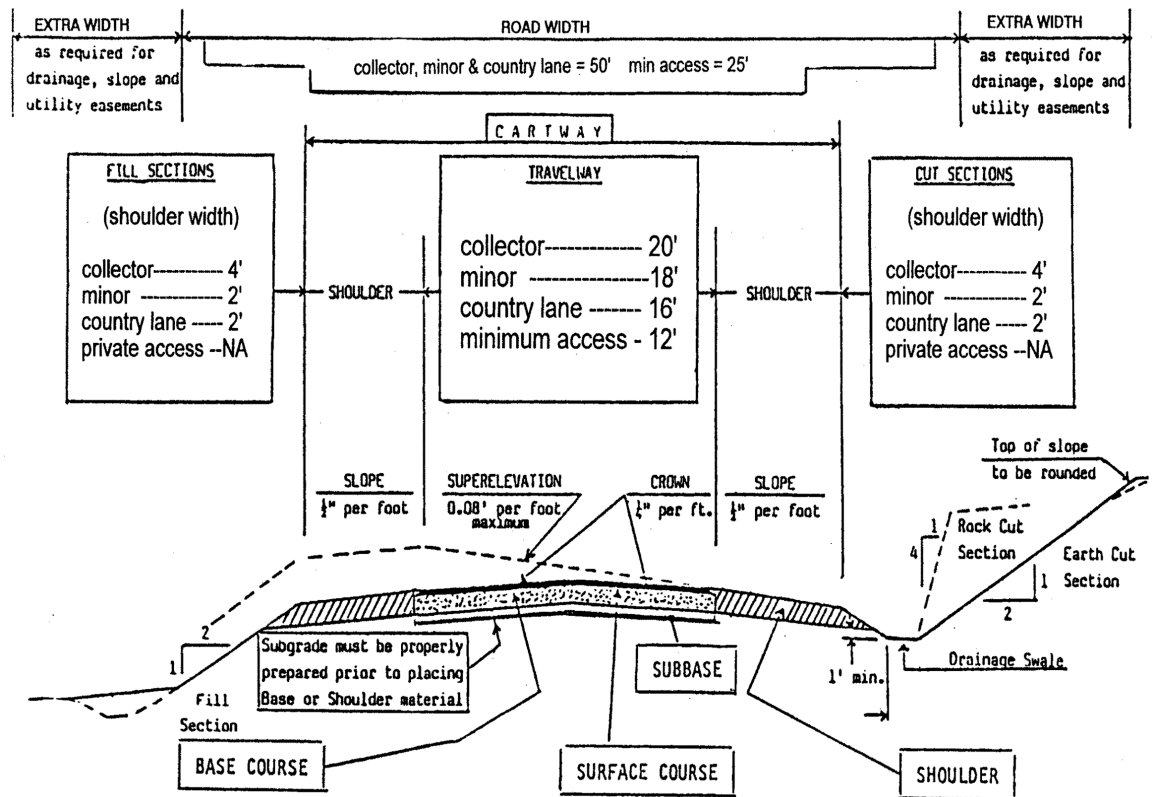
Design Specification	Collector^[f]	Minor	Country Lane^[h]	Private Access^{[g], [h]}
Number of dwelling units served	> 200	26 to 200	25 or less	3 or less
Cross-Section Standards				
Street right-of-way width (feet) ^[a]	50	50	50	25
Additional road width ^[a]	As required for drainage, slope and utility easements			
Cartway width (feet)	28	22	20	NA
Travelway width (feet)	20	18	16	12
Shoulder width, each - cut or fill (feet) ^[i]	4	2	2	NA
Shoulder slope (inches per foot)		0.5		NA
Crown (inches per foot)			0.25	
Superelevation, maximum (feet per foot)			0.08	
Geometric Standards				
Maximum grade (%)	7 ^{[c], [e]}	12 ^{[d], [e]}	12 ^{[d], [e]}	14
Minimum center line radius for horizontal curves (feet) ^[b]	200	150	100	75

Table VI-1**Design Standards for Streets**

Design Specification	Collector^[f]	Minor	Country Lane^[h]	Private Access^{[g], [h]}
Minimum horizontal and vertical sight distance (feet)	300	200	150	100
Minimum tangents between curves (feet)	100	50	NA	NA
Vertical curves	See § 300-40O			

Notes:

- [a] Right-of-way width does not include slope, drainage or utility easements. Additional road width and cartway widths may be required by the Borough to provide for additional construction requirements such as cuts, fills and embankment areas, or to lessen traffic congestion; to secure safety from fire, panic or other dangers; to facilitate the adequate provision for transportation and other public requirements and to promote the general welfare. In cases where topography or other physical conditions make a street required width impractical, the Borough may modify the above requirements.
- [b] Larger radii may be required as determined by alignment to provide required sight distances.
- [c] 10% for up to 500 feet in distance.
- [d] 14% for up to 500 feet in distance.
- [e] The maximum grades in [c] and [d] above may be repeated if separated by distances of 500 feet meeting the standard grade requirements for the class of road.
- [f] Collector standards apply to all commercial and industrial subdivisions and land developments.
- [g] See also § 300-40H.
- [h] Curbs not permitted.
- [i] If curbs are provided, shoulders shall not be provided.



Typical Street Cross Section

Table VI-2

RESIDENTIAL SUBDIVISIONS AND LAND DEVELOPMENTS

Travelway Cross Section

Minimum Depth

(inches)

Road Classification

Course	Material*	Collector	Minor	Country Lane	Private Access***
Surface	2A coarse aggregate**	NA	NA	NA	6
Bituminous surface	ID-2 wearing	1.5	1.5	1.5	NA
Bituminous base	Bituminous concrete base course (BCBC)	4.5	4.5	4.5	NA
Subbase	Subbase (No. 2A)	4	4	4	4

Table VI-2
RESIDENTIAL SUBDIVISIONS AND LAND DEVELOPMENTS
Travelway Cross Section

		Minimum Depth			
		(inches)			
		Road Classification			
Course	Material*	Collector	Minor	Country Lane	Private Access***
Aggregate base	AASHTO No. 1 coarse aggregate with No. 10 choke	12	12	12	6
Shoulders					
2A coarse aggregate**		6	6	6	NA

COMMERCIAL AND INDUSTRIAL SUBDIVISIONS AND LAND DEVELOPMENTS

Travelway Cross Section

		Minimum Depth
		(inches)
Bituminous surface	ID-2 wearing	1.5
Bituminous base	Bituminous concrete base course (BCBC)	4.5
Subbase	Subbase (No. 2A)	6
Aggregate base	AASHTO No. 1 coarse aggregate with No. 10 choke	8
Shoulders	2A coarse aggregate**	6

NOTES:

* All material shall meet PennDOT specifications, Publication 408, latest edition.

** 2A coarse aggregate = Coarse aggregate treated with PennDOT-approved oil for dust control at the application rate specified by PennDOT.

*** Not eligible for dedication.

- L. Easements. Easements for utilities shall be provided and shall conform in width and alignment to the recommendations of the appropriate utility company. Easements shall also be provided for all stormwater drainage ditches, sewers and watercourses. All easements shall be shown on the preliminary and final plan, and the Borough or its agents shall have the right to enforce the restrictive easements relative to the water supply and sewage disposal in the event that the developer and/or lot owners

fail or are unable to do so. The Borough shall further have free access to all developments and lots at all times for the purpose of inspection and enforcement.

(1) Access easements.

- (a) Access easements shall be shown and labeled on the plans to indicate the purpose, easement users and the rights of said users.
- (b) No access easement shall be a part of any lot, but shall be a separate area designed with the express purpose of access to a particular site or facility. (Example: An access to a well lot would be part of the well lot and not a right-of-way across the adjoining building lot.)
- (c) Ownership and maintenance responsibility shall be noted on the plan for each easement.

(2) Utility easements.

- (a) Utility easements shall be a minimum of 10 feet in width and shall be provided along all street rights-of-way in addition to the required street width.
- (b) All existing and proposed utility easements shall be shown and labeled on the plan and included in the restrictive covenants as appropriate.
- (c) Existing and proposed utility easements shall be included in lot sizes unless otherwise restricted by the utility.

M. Street alignment. Street alignment shall be designed as follows:

- (1) Whenever street lines are deflected in excess of 7 1/2 degrees, connection shall be made by horizontal curves.
- (2) Streets shall be designed so that there will be unobstructed sight distances along the center line thereof as set forth in Table VI-1.
 - (a) Stopping sight distance. Stopping sight distance is the length of highway over which an object is visible to the driver at all times. For the purpose of measuring the available stopping sight distance at a particular location, the driver's eye height is assumed to be 3.5 feet above the roadway surface, and the object height is assumed to be six inches above the roadway surface.
 - (b) Corner sight distance. Corner sight distance refers to the maximum length of highway along which a driver stopped at an intersection or driveway can continuously see another vehicle approaching on another roadway or driveway. For the purpose of measuring the available corner sight distance, the height of both the driver's eye and the approaching vehicle should be assumed to be 3.5 feet above the roadway surface. In addition, the driver's eye should be assumed to be 10 feet from the near edge of the intersecting roadway or driveway or the near edge of the closest travel lane in the event there is parking permitted on the intersecting roadway or driveway.

- (3) Between reverse curves the following minimum tangents shall be provided:
 - (a) On collector streets: 200 feet.
 - (b) On minor streets: 100 feet.
 - (c) On country lanes: 50 feet.

N. Street grades. Street grades shall be designed as follows:

- (1) Center-line grades shall not exceed the grades set forth in Table VI-1.
- (2) The maximum grade across the turnaround on a dead-end street shall not exceed 4%.
- (3) To provide for adequate drainage, the minimum grade of any street gutter shall not be less than 1%.
- (4) To provide for adequate drainage, the minimum grade of any parallel ditch along a street shall be not less than 1%.
- (5) A leveling area for all street intersections shall be provided as follows:
 - (a) The tangent grade of the through street at the point of intersection of the center lines of the two streets shall not exceed 8% for minor street or private access street intersections, and all other intersections shall comply with the grades as required on Table VI-1. Crest and sag vertical curves shall be provided in accordance with § 300-40O.
 - (b) The tangent grade of the connecting street(s) shall not exceed 4% within 25 feet of the right-of-way lines of the through street. Crest and sag vertical curves shall be provided in accordance with § 300-40O. The point of vertical curvature or tangency shall not be within the through street right-of-way.

O. Vertical curves. Vertical curves shall be used at changes of grade exceeding 4% and shall be designed as follows:

- (1) Crest vertical curves shall be designed in relation to the road classification to provide vertical sight distance consistent with the horizontal sight distances as set forth in Table VI-1.
- (2) On minor streets, sag vertical curves shall have a minimum length of 15 feet for each 1% algebraic difference in tangent grade with an absolute minimum length of 75 feet. (Example: 5% = 75 foot vertical curve; 5.1% to 6% = 90 foot vertical curve, etc.)
- (3) Except on minor streets, sag vertical curves shall have a minimum length of 25 feet for each 1% algebraic difference in tangent grade with an absolute minimum length of 100 feet. (Example: 4% = 100 foot vertical curve; 4.1% to 5% = 125 foot vertical curve, etc.)
- (4) The following vertical curve information should be shown on the plans:
 - (a) Length of vertical curve.

- (b) Elevation and stationing of the VPI, VPC, VPT and MO.
- P. Clear sight triangles. At all intersections, a triangular area shall be graded and/or other sight obstructions removed in such a manner as not to obscure vision between a height of from two to 10 feet above the center-line grades of the intersecting streets.
- (1) The clear sight triangle shall be guaranteed either by deed restriction, by lease restriction or by plan reference, whichever method is applicable. Vegetation shall not be planted or allowed to grow in such a manner as to obscure said vision.
 - (2) Such triangular area shall be determined by the intersecting street center lines and a diagonal connecting the two points, one point at each street center line:
 - (a) One hundred seventy-five feet from the intersection of such street center lines, if either street is a state or Borough road.
 - (b) One hundred twenty-five feet from the intersection of such street center lines, if either street is a collector street.
 - (c) Eighty-five feet from the intersection of such street center lines, if both streets are minor streets.
 - (d) Whenever a portion of the line of such triangle occurs behind (from the street) the building setback line, such portion shall be shown on the final plan of the subdivision and shall be considered a building setback line.
- Q. Residential driveways. This § 300-40Q shall apply to lots in subdivisions approved after the effective date of this chapter. Driveways proposed for preexisting lots and nonresidential driveways shall be governed by other applicable Borough and state requirements. Residential driveways shall comply with the following standards:
- (1) Driveways shall not be permitted to have direct access to public streets unless authorized by the Borough or the Pennsylvania Department of Transportation, as applicable, via issuance of a highway occupancy permit.
 - (2) Lots shall not be platted which would result in driveways which would exceed 16% in grade or as otherwise required by state or Borough regulations.
 - (3) Entrances shall be rounded at a minimum radius of five feet or shall have a flare construction that is equivalent to this radius at the point of intersection with the cartway edge.
 - (4) Future driveways which are to be constructed adjacent to a street intersection shall be shown on the preliminary and final plans.
 - (5) The minimum distance between a driveway or point of access and the nearest intersecting street shall be as follows:

**Distance between Center Line of Driveway and
Center Line of Nearest Intersecting Road by
Type of Intersecting Road**

Type of Subdivision or Land Development	Borough or State	Collector	Minor, Country Lane and Private Access
Residential	100 feet	75 feet	40 feet

- (a) The nearest intersecting street shall be construed as being on the same or the opposite side of the street on which the lot is located.
- (6) A leveling area not exceeding 4% in grade and not less than 25 feet in length shall be provided where a driveway intersects with the right-of-way of the adjoining road.
- (7) Adequate provision shall be made for parallel drainage facilities.
- R. Bridges and stream crossings. Bridges and other stream crossing structures which are part of the proposed street system shall be designed and constructed in accordance with the current Pennsylvania Department of Transportation Standards and Specifications for H-20 loading. Copies of required DEP permits and evidence of compliance with any other state or federal requirements shall be provided. At a minimum, the width of the bridge or stream crossing shall be equal to the travelway width of the roadway carried by the bridge or stream crossing.
- S. Clearing and grubbing. The right-of-way for all collector, minor and private access street roads shall be cleared and grubbed only to the extent necessary to provide the required road cartway, cuts and fills, and associated drainage facilities.
- (1) All trees, stumps, roots and other material deemed unsuitable by the Borough shall be removed from the grading area.
- (2) Voids created by the removal of stumps or roots shall be backfilled and compacted to the satisfaction of the Borough.
- (3) Rocks greater than 12 inches in diameter shall be removed to a minimum depth of six inches below the finish subgrade.
- (4) All cleared and grubbed areas shall be inspected and approved by the Borough prior to the cut and fill operations.
- T. Cuts and fills. All cuts and fills shall be constructed as follows:
- (1) The maximum slope of any earth embankment or excavation shall not exceed one foot vertical to two feet horizontal unless stabilized by a retaining wall or cribbing, except as approved by the Planning Commission for special conditions.
- (2) The maximum slope of any rock excavation shall not exceed four feet vertical to one foot horizontal.
- (3) All excavations and embankments shall have a slope to the point of

intersection with the natural grade with a rounding of the top of the slope of excavations to prevent erosion.

- (4) All embankments shall be compacted to the satisfaction of the Borough.
- (5) Adequate provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surfaces of fills.
- (6) Cuts and fills shall not endanger adjoining property.
- (7) Fills shall be placed in lifts and compacted in accord with specifications of PennDOT Publication 408, latest edition, to minimize sliding or erosion of the soil.
- (8) Fills shall not encroach on natural watercourses or constructed channels, and fills placed adjacent to such natural watercourses or constructed channels shall have suitable protection against erosion during periods of flooding.
- (9) Grading shall be done in a manner so as not to divert water onto the property of another landowner without the written consent of the landowner and the Planning Commission.
- (10) During grading operations, necessary measures for dust control shall be exercised.
- (11) Grading equipment shall not be allowed to cross streams, and adequate provisions shall be made for the installation of culverts and bridges.

U. Subgrade, base and surface.

- (1) Subgrade.
 - (a) The design and construction of the roadbed shall take into consideration the supporting capacities of the subgrade, with particular attention to those soils which are subject to frost heave.
 - (b) Subgrade, parallel and cross drainage facilities shall be provided when necessary and shall be located, designed and installed to maintain proper drainage.
 - (c) Unsuitable soils, as identified by the project engineer and confirmed by the Borough Engineer, shall be removed and replaced, drained or otherwise stabilized to provide adequate support for the roadbed and anticipated loads. If construction of a roadbed in such locations and particularly on soils identified in the county soil survey as subject to frost heave is proposed, the Borough shall require such drainage facilities and/or underdrains and subgrade drains as necessary to stabilize the subgrade. The design of such facilities shall be approved by the Borough.
- (2) Subbase and base course. Subbase and base course aggregate material shall conform in type and be compacted to the depths shown in Table VI-2 of this chapter in accordance with the latest specifications of the Pennsylvania Department of Transportation (Form 408) and the requirements of the Borough.

- (3) Surface course. The bituminous surface course shall conform in type and be compacted to the depths shown in Table VI-2 of this chapter in accordance with the latest specifications of the Pennsylvania Department of Transportation (Form 408) and the requirements of the Borough.
- (4) Shoulders. Shoulders shall be constructed of the material and compacted to the width and depth shown in Table VI-2 of this chapter.

V. Walls, slopes, and guide rails.

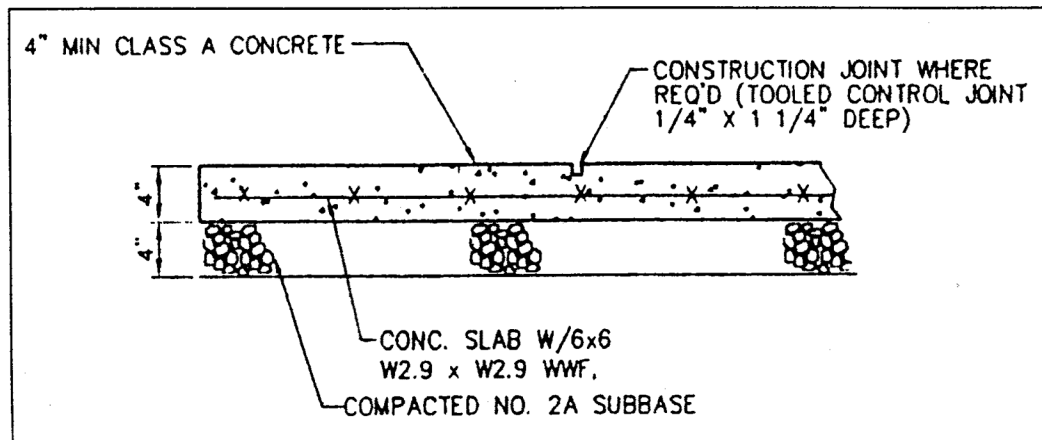
- (1) Where the grade of the street is above or below the grade of the adjacent land, walls or slopes shall be constructed in a manner satisfactory to the Borough to support the street or the adjacent land, as the case may be.
- (2) Guide rails shall be installed at points where a road or required parking area will be constructed three feet or more above existing grade or as otherwise determined by the Borough's Engineer in accord with PennDOT standards.

W. Curbs and gutters.

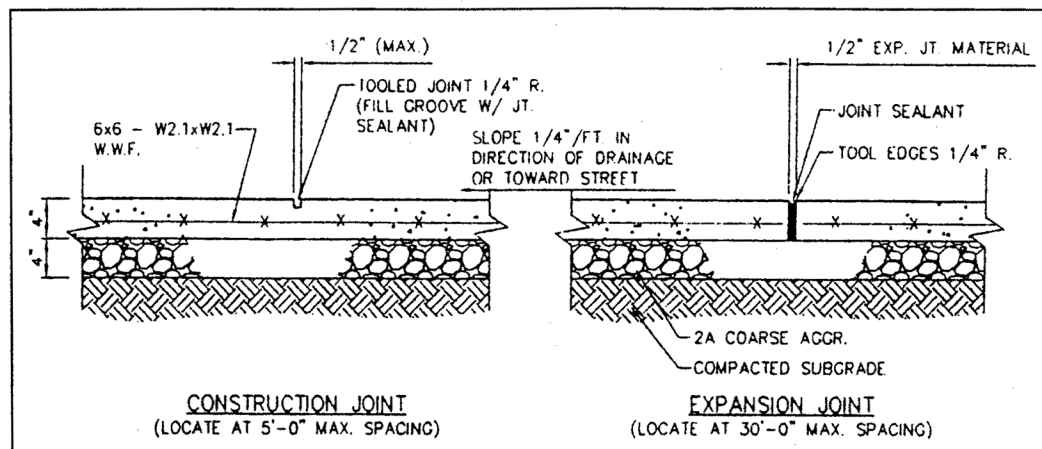
- (1) Curbs shall ordinarily be required if such construction is deemed necessary by the Borough for public safety, as follows
 - (a) In commercial developments, multifamily developments, or other similar intensive developments:
 - (b) Where necessary for proper drainage.
 - (c) To provide protection from traffic where sidewalks are provided.
- (2) Minimum curb or pavement edge radii at street intersections shall be 30 feet.
- (3) Where curbs exist on abutting properties, their extension will ordinarily be required throughout the proposed subdivision.
- (4) Where curbs are not required, adequate gutters shall be graded and protected by seeding or appropriate surfacing.
- (5) Curbs shall be constructed in accord with the requirements for RC 64, Curbs and Gutters, in the most current edition of PennDOT publication "Standards for Roadway Construction."

X. Sidewalks.

- (1) Sidewalks may be required where necessary to provide proper pedestrian circulation or to provide access to community facilities and common areas. Sidewalks, where required or provided, shall be located within the street right-of-way immediately adjacent to the curbs, except as may be approved by the Council to accommodate street trees or other landscaping.
- (2) Sidewalks and street crosswalks in residential and nonresidential subdivisions or land developments shall have a minimum width of four feet.
- (3) Sidewalk construction shall conform to the following:



Concrete Sidewalk (not to scale)



Concrete Sidewalk Joint Detail (not to scale)

- Y. Parking on streets. Off-street parking for all uses shall be provided in accord with Chapter 400, Zoning, and streets shall not be designed to accommodate on-street parking.
- Z. Driveway and cross drainage. At each point where a street is intersected by a driveway that requires surface drainage water to be carried under the driveway at the intersection, a culvert pipe shall be installed across the width of the driveway to meet the drainage requirements determined in accord with § 300-42 of this chapter. Such cross drains as may be necessary shall also be installed under the street in accord with the drainage plan. Pipes shall be installed at such depth and in such manner as dictated by the site, and no pipe shall be installed that is less than 18 inches in diameter. (See § 300-42 for additional requirements.)

§ 300-41. Monuments and markers.

Monuments and markers shall be placed so that the center or scored or marked point shall coincide exactly with the intersection of the lines being monumented or marked

and shall conform to the following.

A. Monuments.

- (1) Monuments shall consist of either:
 - (a) Solid steel rods not less than one inch in diameter and not less than 36 inches in length (preferred 42 inches to 48 inches).
 - (b) A two-inch (inside diameter) galvanized pipe filled with concrete at least 36 inches in length (preferred 42 inches to 48 inches).
 - (c) A concrete cylinder four inches in diameter and at least 36 inches in length (preferred 42 inches to 58 inches).
 - (d) Other types approved by the Borough.
- (2) Monuments shall be set flush with the finish grade of the surrounding ground.
- (3) All monuments shall be placed under the direction of a registered professional land surveyor, who will take full responsibility for their accuracy and placement.
- (4) Monuments shall be placed as follows:
 - (a) At all exterior property corners where permanent corners do not exist at the time of the perimeter survey. (Existing permanent corners shall not be removed or replaced but shall be noted on the plan as existing and described.)
 - (b) One monument for every 10 lots proposed shall be placed at intersections of rear lot lines, the location of which shall be proposed by the developer and approved by the Borough. However, an adequate number of monuments shall be provided so that in no case shall the distance between monuments exceed 1,000 feet.

B. Markers.

- (1) Lot markers shall consist of either:
 - (a) Solid steel rods not less than 3/4 inch in diameter and not less than 24 inches in length.
 - (b) Steel pipes not less than 3/4 inch in diameter and not less than 24 inches in length.
 - (c) Other types approved by the Planning Commission.
- (2) Markers normally shall be set two inches above the finish grade of the surrounding ground.
- (3) All markers shall be placed under the direction of a registered professional land surveyor, who will take full responsibility for their accuracy and placement.

- (4) Markers shall not be placed until road grading has been completed.
- (5) Lot markers shall be placed as follows:
 - (a) At all points where lot lines intersect street right-of-way lines.
 - (b) At all points where lot lines intersect exterior property lines.
 - (c) At all interior lot corners.
 - (d) At such other lot corners and locations as the Borough may direct.

§ 300-42. Stormwater and drainage control.

A. Purpose and stormwater management ordinance.

- (1) Generally. The purpose of this section is to minimize stormwater runoff, maximize on-site infiltration and aquifer recharge, provide for the management of the quantity, velocity and direction of stormwater flow to provide protection to downstream property owners, to control soil erosion and sedimentation and to protect the public general health, safety and welfare.
- (2) Stormwater management plans. In cases where the Borough has adopted a special purpose ordinance governing stormwater management in accord with a watershed management plan approved by the Pennsylvania Department of Environmental Protection under the terms of the Storm Water Management Act,⁷¹ the requirements of such ordinance shall apply to developments in that watershed in addition to the requirements of this chapter. In cases where two standards conflict, the more restrictive shall apply.

B. Plan. A stormwater drainage and management plan shall be required for all major subdivisions and all land developments (except minor residential land developments) and shall be subject to the approval of the Borough and Borough Engineer. The plan shall show all existing surface drainage features and shall include all appropriate designs, details and dimensions necessary to clearly explain proposed construction materials, grades and elevations. The developer shall submit the plan and all associated engineering calculations to the Planning Commission at the time of subdivision or land development plan submission. Construction materials shall comply with the latest PennDOT Publication 408 standards and the applicable PennDOT RC standards for construction.

C. Compliance with state regulations. The plan shall meet the intent of § 13 of the Pennsylvania Storm Water Management Act⁷² and other applicable regulations to assure that the maximum rate of stormwater runoff is no greater after development than prior to development activities, or the quality, velocity and direction of stormwater is managed in a manner which otherwise adequately protects health and property from possible injury. Said plan shall comply with all Pennsylvania Department of Transportation requirements.

D. Design criteria.

71. Editor's Note: See 32 P.S. § 680.1 et seq.

72. Editor's Note: See 32 P.S. § 680.13.

- (1) The basic goal of the stormwater management plan shall be to maximize the on-site infiltration of stormwater and minimize the overall volume of stormwater leaving the property after development, and the plan shall incorporate best management practices to achieve this goal.
- (2) Stormwater management facilities shall be designed for a storm frequency of 10 years, using generally accepted engineering principles appropriate for the proposed site and development. In addition to being designed for a ten-year storm, detention facilities shall be designed to pass a one-hundred-year storm without facility failure. In general, the Soil-Cover-Complex Method (Natural Resources Conservation Service method) or the Rational Method shall be used to determine peak discharge and estimated runoff.
- (3) The post-development peak rate of stormwater discharge from the parcel being developed shall not exceed the predevelopment peak rate of stormwater discharge from the parcel being developed. The calculation of post-development discharge shall, in addition to areas disturbed during development, include the estimated effect of all runoff expected from driveways, buildings, walkways, parking areas and other impervious areas associated with the ultimate build-out of the subdivision or land development. In addition to the ten-year storm, storms of less frequency shall also be controlled.
- (4) The Planning Commission shall, in cases where existing drainage problems, flooding or other factors relating to the public health, safety and welfare and upon the recommendation of the Borough Engineer, require that the proposed stormwater control facilities be designed to a twenty-five-year storm frequency and/or other more stringent criteria or require the provision of stormwater control facilities in areas where no such facilities are proposed by the developer.

E. Additional requirements.

- (1) All proposed surface drainage structures and "Q values" shall be indicated on the drainage plan submitted with the subdivision or land development plan and shall be considered "improvements" for the purposes of final subdivision approval. Construction materials shall comply with the latest PennDOT Publication 408 standards.
- (2) Natural drainage courses and points of natural drainage discharge shall not be altered.
- (3) Stormwater or natural drainage water shall not be diverted to overload existing drainage systems or create flooding or the need for additional stormwater management or drainage facilities on other properties without the written consent of the owners of such properties and the provision by the developer of facilities to control the stormwater or drainage.
- (4) Where a subdivision is traversed by an existing natural drainageway or channel, there shall be reserved by the developer a drainage easement conforming substantially with the line of such drainageway or channel and of such width as determined by the Planning Commission adequate to preserve

the unimpeded flow of natural drainage or for the purpose of widening, deepening, relocating, maintaining, improving or protecting such drainage facilities. A drainage easement shall also be so provided for all proposed stormwater control facilities.

- (5) Where a subdivision is traversed by a watercourse, there shall be provided a drainage easement of not less than 25 feet on each side of the stream from each stream bank or such additional width as will be adequate to preserve the unimpeded flow of the watercourse.
- (6) Streets shall be so designed as to provide for discharge of surface water from their rights-of-way.
- (7) In no case shall any pipe system of less than 15 inches be installed underneath a street or driveway, and all pipes shall be of a plastic, PVC, HDPE, concrete or other material of an equal or greater useful life, meeting the requirements of PennDOT Publication 408, latest edition.
- (8) Drainage structures that are located on state highway rights-of-way shall be provided in accord with Pennsylvania Department of Transportation requirements, and a copy of the required highway occupancy permit shall be provided to the Borough prior to final plan approval.
- (9) Lots shall be laid out and graded to prevent cross-lot drainage and to encourage drainage away from proposed building areas.
- (10) Drainage easements of a minimum of 10 feet in width shall be provided along all side and rear lot lines (a total of 20 feet for abutting lots) and adjacent to street rights-of-way as required by the stormwater drainage and management plan.
- (11) Paved street shoulders, gutters and/or drainage swales and riprap of drainage swales may be required to provide for adequate stormwater management.

F. Maintenance of stormwater control facilities.

- (1) Maintenance of stormwater control facilities, including easements between lots, shall be the responsibility of the owner of said facilities, and a note to that effect shall be included on all plans. A legally binding agreement may be required between the owner and the Borough to provide for such maintenance and providing for inspections by the Borough.
- (2) In cases where a property owners' association is created for the ownership, operation and maintenance of common facilities, such property owners' association shall be responsible for the maintenance of stormwater control facilities, and such maintenance shall be established in the deed covenants and restrictions and stated on all plans.
- (3) When stormwater management control facilities are located on an individual lot, and when such facilities are the responsibility of that landowner to maintain, a description of the facility or system and the terms of the required maintenance shall be incorporated as part of the deed to the property.

- (4) If the Borough determines at any time that any permanent stormwater management control facility has been eliminated, altered or improperly maintained, the owner of the stormwater control facility shall be advised of corrective measures required and given a reasonable period of time to take necessary action. If such action is not taken by the property owner, the Borough may cause the work to be done and lien all costs against the property.

§ 300-43. Soil erosion and sedimentation controls.

All soil erosion and sedimentation control plans shall meet the specifications of and shall be approved by the Lackawanna County Conservation District and PA DEP. Said plan shall comply with Commonwealth of Pennsylvania, Title 25, Chapter 102, Department of Environmental Protection regulations for soil erosion and sedimentation control. Erosion and sedimentation controls shall be installed according to the approved plan and shall be maintained by the developer in proper functioning condition until stabilization of the area is completed as determined by the Lackawanna County Conservation District. The applicant shall submit the plan to the Borough at the time of preliminary plan application. preliminary plan approval shall not be granted by the Borough until all required approvals and any NPDES permits are obtained from the Lackawanna County Conservation District and DEP.

§ 300-44. Water supply and sewage disposal.

Connection to the central water system serving the Borough and the Borough's central sewage collection and treatment system shall be required in accord with the requirements of the system operators. The applicant shall be required to provide all conveyance and collection lines in accord with system operator standards. In cases where such connections cannot be made, the other standards in this § 300-44 shall apply.

A. General standards.

- (1) All subdivisions and land developments shall be served by an adequate water supply and sewage disposal system, and the developer shall provide evidence documenting said adequacy.
- (2) All suppliers of nonmunicipally owned central water and/or sewer services shall be organized in such a fashion as may be required by the Pennsylvania Public Utility Commission, and the developer shall provide for operation, maintenance and continuity of services in a manner which is acceptable to the Borough.
- (3) One copy of all correspondence, supporting documentation, applications for permits and certificates for operation submitted to the Pennsylvania Department of Environmental Protection and/or the Pennsylvania Public Utilities Commission for the right to provide such services shall be forwarded to the Borough as a part of the public record. One copy of the permit and/or certificate of convenience issued by the Pennsylvania Department of Environmental Protection and/or the Pennsylvania Public Utilities Commission authorizing such services shall be forwarded upon receipt to the Borough as a part of the public record.

- (4) In the case of utilization of a publicly owned or other existing central water supply and/or sewage disposal system, the developer shall submit at the preliminary stage a letter from the operator of such utility indicating the utility owner's willingness to supply service to the development and including a verification of the adequacy of the utility system to serve the proposed development. At the final approval stage, an executed agreement with the service supplier shall be submitted.
 - (5) All required certificates of convenience, approvals and permits shall be obtained by the developer and/or the utility owner as a condition of preliminary approval and shall be submitted with the final plan application.
 - (6) All water supply and sewage disposal systems shall be designed and certified by a registered professional engineer or other individual otherwise certified for such design work, and all systems shall be designed in accord with all applicable federal, state and local standards.
 - (7) Pressure testing of all collection/conveyance of any central water supply or central sewage disposal system lines shall be required as part of the inspections required in accord with Article VI of this chapter. All such testing shall be conducted in accord with the procedures specified by the Borough Engineer.
 - (8) All sewage disposal systems shall be consistent with the Borough Sewage Facilities Plan.
- B. On-site water supply. All on-site water supply systems shall comply with the requirements of the Pennsylvania Department of Environmental Protection and/or applicable Borough ordinances. The requirement for the installation of on-lot wells shall be noted on the development plan and shall be required by restrictive covenant to be approved by the Borough prior to preliminary plan approval.
- C. Central water supply.
- (1) Project supply. If the Borough water supply is not accessible and water is to be furnished on a project basis, the applicant shall, upon submission of the subdivision or land development plan, submit written evidence that he has complied with all Borough, county and state regulations, and that the proposed system to be installed meets the requirements of the PA PUC, PA DEP, and any other applicable regulations.
 - (2) Deep well source.
 - (a) Wells shall be sited, drilled and tested under the direct supervision of a registered professional engineer and/or a professional groundwater geologist.
 - (b) Wells shall be located away from potential sources of pollution on a reserved parcel of not less than 5,000 square feet in size.
 - (c) The capacity of the well(s), as certified by a professional engineer, shall be sufficient to produce at least 110 gallons per capita per day and/or 400 gallons per day for each residential dwelling unit to be served. Adequate capacity of any well(s) to service industrial or commercial establishments

shall be documented by the applicant to the satisfaction of the Borough and the Borough Engineer.

- (d) Wells shall be pump-tested using a controlled step-drawdown test to establish the specific capacity of each well and to establish a long-term pumping rate. The well shall be pumped at the above-determined long-term pumping rate for a sufficient period of time for stabilization to occur and the recovery noted. In no case will a pumping rate greater than the recharge rate be allowed.
 - (e) Well construction shall be consistent with generally accepted practice and the guidelines of the Pennsylvania Department of Environmental Protection.
 - (f) Documentation of the effect of the projected area-wide drawdown of the water table may be required by the Borough if the anticipated pumping of groundwater warrants such documentation.
- (3) Water distribution system.
- (a) The system design shall follow good engineering practice and the requirements of the PA DEP and/or the Public Utilities Commission. The distribution system shall be designed and sized to provide the design flows at a minimum pressure of 25 pounds per square inch at curb stops.
 - (b) Pipe classes shall be consistent with design pressures.
 - (c) Before being placed into service, the system must be tested and disinfected by procedures established by the Department of Environmental Protection.
 - (d) The proposed utility shall provide for adequate flow of water for the subdivision supplied by interconnecting two or more wells or by providing storage for a minimum of one day's demand.
 - (e) Service connections shall be a minimum of three-fourths-inch diameter.
- (4) Flow rates.
- (a) Distribution systems serving residential developments shall provide for a minimum flow rate of at least 1.25 gallons per minute for each lot or proposed dwelling unit for domestic purposes only.
 - (b) Distribution systems serving commercial or industrial developments shall provide for a minimum flow rate of at least 25 times the projected average daily flow rate.
 - (c) Distribution systems intended to provide for fire flow shall provide for minimum flow rates in accordance with the standards of the National Fire Underwriters Association.

D. On-lot sewage disposal.

- (1) Standards. All on-site sewage disposal systems shall comply with the

applicable PA DEP standards, the Borough Sewage Facilities Ordinance⁷³ and all other applicable standards.

- (2) Site suitability.
 - (a) All residential lots in developments proposing the use of on-site sewage disposal shall contain two areas suitable for such a disposal system, with such areas indicated on the preliminary plan and final plan. One area shall be used for installation of the system, and the second area shall be reserved for future use should the constructed sewage system fail beyond repair. All sewage disposal areas shall remain undisturbed, and this shall be assured via a covenant placed on the plan.
 - (b) Prior to any action on the preliminary plan by the Planning Commission the applicant must document that all lots in subdivisions proposing on-site sewage disposal contain suitable area as tested by the Borough SEO in accord with DEP requirements and this § 300-44D or are already served by an adequate, existing sewage disposal system.
 - (c) Should the applicant propose the use of individual systems which do not require soil testing, documentation shall be provided that the affected lots are suitable for the proposed system. In addition, a note shall be placed on the preliminary plan and final plan detailing the type of system(s) proposed and stating that the affected lots have not been tested for a soil-based system.
 - (3) Conservation design subdivisions. In the case of conservation design subdivisions, the primary and reserved on-site sewage disposal areas may be located on common land, provided the necessary easements for construction and maintenance of such systems are provided.
 - (4) System maintenance. In order to extend the useful life of on-site sewage disposal systems and minimize on-site disposal system problems, the developer shall, for all subdivisions of 10 lots or more, provide for on-site system maintenance via the creation of a property owners' association (POA). This requirement shall also apply to any subdivisions of less than 10 lots if a POA is otherwise required or proposed. Such POA shall be created in accord with § 300-32 of this chapter and shall provide for the inspection of the on-site systems and the pumping of septic tanks at intervals of not less than three years from the date of the operation of each system. The POA shall file with the Borough an annual report detailing which systems have been inspected and pumped, showing receipts for same from a septage hauler disposing of the septage at a DEP-licensed facility. Failure of the POA to comply with this Subsection D(4) shall be considered a violation of this chapter.
- E. Central sewage disposal system. All subdivisions and land developments within the Borough sewer service area shall connect to the Borough system. If a central sewage disposal system is proposed outside the Borough sewer service area, such subdivision and land development shall connect to the Borough system. In all cases, the construction of conveyance lines and all connections shall be made in accord

73. Editor's Note: See Ch. 282, Sewers and Sewage Disposal.

with the Borough Sewage Facilities Ordinance and all other applicable standards.

- F. Community system maintenance. In order to extend the useful life of community sewage disposal systems and minimize disposal system problems, the developer shall, for all subdivisions or land developments using a community system, provide for system maintenance via the creation of a property owners' association (POA). Such POA shall be created in accord with § 300-32 of this chapter and shall provide for the inspection of the community system each year and the pumping of septic tanks at intervals as required but not less once every three years from the date of the operation of each system. The POA shall file with the Borough an annual report detailing which systems have been inspected and pumped, showing receipts for same from a septage hauler disposing of the septage at a DEP-licensed facility. Failure of the POA to comply with this § 300-44F shall be considered a violation of this chapter.

§ 300-45. Utilities.

All utility lines required to service the subdivision shall be planned in cooperation with the respective utility companies. A letter shall accompany the subdivision or land development plan, stating that the utility plan has been reviewed by the applicable utility company and that such plan is approved and that service will be available. All cables, wires, conduits, pipes and lines servicing the development shall be subject to the requirements set forth in this chapter.

§ 300-46. Trees and vegetation.

- A. Tree protection. A landscape plan meeting the requirements of this section shall be prepared for all land developments and major subdivisions, and no land development or major subdivision shall be finally approved until all landscaping has been installed or guaranteed in accord with this chapter.
- B. Legislative intent. It is the intent of these landscape planting requirements to conserve existing healthy plant communities, such as woodlands, and to require new landscape plantings in critical areas of new developments in order to:
- (1) Reduce soil erosion and protect surface water quality by minimizing stripping of existing woodlands or tree masses.
 - (2) Reduce stormwater runoff velocity and volume by providing planting areas where stormwater can infiltrate.
 - (3) Improve air quality by conserving existing or creating new plantings which produce oxygen and remove carbon dioxide from the atmosphere.
 - (4) Encourage tree planting and landscaping along public streets. (See definition of "improvement.")
 - (5) Provide wind breaks, shade and the other microclimate benefits of trees and landscape plantings.
 - (6) Conserve historically, culturally or environmentally important landscapes, such as wooded hillsides, scenic views, or aesthetic natural areas.

- (7) Preserve and enhance property values through the implementation of good landscape architectural standards.
 - (8) Provide planted buffers between land developments which act to visually integrate a development into the existing landscape.
 - (9) Provide planted and architectural visual screens around visually obtrusive site elements within development.
 - (10) Enhance the aesthetic appearance of the community and provide privacy and beauty.
 - (11) Conserve energy by moderating solar radiation and providing shade.
 - (12) Improve the environment for pedestrians along streets, parking lots, and other pedestrian areas.
 - (13) Aesthetically improve stormwater management facilities, such as detention basins, without impairing function.
- C. Minimum number of trees; preservation of existing vegetation. Unless other provisions of this chapter require more trees or vegetation, each development site shall include a minimum of 12 deciduous or evergreen trees for each one acre. Each deciduous tree shall be 2.5-inch caliper or greater, and each evergreen tree shall be six to seven feet in height or greater. As an alternative, 10 trees for each one acre shall be required if deciduous trees are four inches in caliper or greater and evergreen trees are eight to 10 feet in height or greater. Five shrubs 2.5 feet in height or greater may be substituted for one tree of 2.5-inch caliper for a maximum of 20% of the tree requirement.
- (1) Preservation of existing vegetation. Each mature tree, tree mass or woodland on the site shall be designated "TO REMAIN" or "TO BE REMOVED" and shall be shown on the plan in accord with the following criteria:
 - (a) All subdivisions and land developments shall be laid out in such a manner as to minimize the removal of healthy trees and shrubs on the site. Mature trees (six-inch or greater DBH) shall be preserved insofar as possible, and special consideration shall be given to major specimen trees (twelve-inch or greater DBH). The plan shall show the location of major specimen trees in areas of the site proposed for development and the edge of existing woodlands.
 - (b) The applicant shall document that vegetation removal is minimized. If challenged by the Borough, the applicant shall produce evidence, such as written documents or plans certified by a registered landscape architect or other person deemed qualified by the Borough, showing that no alternative layouts are possible and that no alternative clearing or grading plan would reduce the loss of mature trees, tree masses and woodlands.
 - (c) The following criteria shall be used by the Borough to make the final determination of which mature trees, tree masses or woodland shall be designated "TO REMAIN":

- [1] The outermost branches of the tree(s) are at least five feet from any proposed buildings or structures.
 - [2] The outermost branches of the tree(s) are at least five feet from any proposed changes in grade, drainage structure, utility corridor, parking or loading/unloading area, sidewalk, on-site sewage system, or any other excavations.
 - [3] The tree(s) are clear of any proposed sight triangles and do not, by their location or apparent health, pose any undue threat to the public health, safety or welfare. The Borough may permit some landscape material to be placed in the clear sight triangle when it determines that the type of material and its location will not create a hazard to motorists or conflict with utility locations.
 - [4] If these trees are diseased or are excessive in number and thinning will promote and enhance the healthy development of the remaining trees, the Borough may require the removal of the trees.
- (d) Mature trees, tree masses or woodlands that are not designated "TO REMAIN" shall be designated "TO BE REMOVED." These trees shall be removed in the field during the construction process.
 - (e) Specimen tree preservation or removal shall be considered on an individual basis and site conditions.
- (2) Protection of existing vegetation. Existing vegetation designated "TO REMAIN" in accord with Subsection C(1)(c) above shall be identified in the field prior to any clearing and shall be physically protected throughout the construction process. A temporary physical barrier, such as a snow fence, shall be erected a minimum of one foot outside the dripline on all sides of individual trees, tree masses or woodlands prior to major clearing or construction. The barrier shall be placed to prevent disturbance to or compaction of soil inside the barrier and shall remain until construction is complete. The barrier shall be shown on the landscape plan.
 - (3) Credit for existing trees. If healthy, existing trees will be preserved which will generally meet the requirements of this section, the Council may, in its discretion, permit the existing tree(s) to serve as a credit toward the number of shade trees required to be planted. In addition, the Council, in its discretion, may permit existing trees which would otherwise be required to be maintained by this chapter to be removed in exchange for the developer planting replacement trees in accord with this section. To be eligible for use as credit toward a required tree, a preserved tree shall be maintained in such a manner that a minimum of 50% of the ground area under the tree's dripline shall be maintained in natural ground cover and at the existing natural ground level. The following standards shall be used to determine the extent of credit:

DBH of Approved Preserved Tree

(inches)	Number of Credited Trees
Greater than 30	4
15 to 29	3
7 to 14	2
2 to 6	1

- (4) Hydrology. Alteration of existing drainage patterns and water supply for the protected vegetation shall be minimized.
 - (5) Transplanting existing plants. Specimen trees or individual trees from woodlands or tree masses designated "TO BE REMOVED" are encouraged to be transplanted from one area of the site to another. Transplanted trees must conform to the requirements of this section.⁷⁴
 - (6) Clear sight triangles. All landscaping shall comply with the sight distance requirements of this chapter, including intersections of public streets and access drives of commercial, industrial and multifamily developments. The Borough may permit some landscape material to be placed in the clear sight triangle when it determines that the type of material and its location will not create a hazard to motorists or conflict with utility locations.
 - (7) Topsoil protection. Topsoil shall not be permanently removed from a lot except from areas that will be covered by buildings or paving. This shall not prohibit the temporary movement and storage of topsoil during construction.
 - (8) Tree removal. Trees within the street right-of-way and all other plantings required by this § 300-46 shall not be removed without a permit from the Zoning Officer, except for trees removed by the Borough or the state and for trees approved to be removed under this § 300-46.
- D. Street trees. Unless the requirements of the Borough Shade Tree Commission dictate otherwise, where the subdivision or land development is cleared or devoid of trees, the developer shall plant shade trees meeting the following specifications within a ten-foot planting strip adjacent to all street rights-of-way.
- (1) Types of trees. Trees shall be of nursery stock quality of a deciduous species capable of attaining a height of 60 feet approved by the Planning Commission. Topography and natural and historical features shall be considered by the developer and the Borough in selecting and approving species. All trees shall be a minimum of 2.5 inches' diameter at breast height.
 - (2) Location. Trees shall be planted along the street right-of-way on both sides of the street at intervals of not less than 50 feet. The location of shade trees will be subject to the approval of the Planning Commission. Where sidewalks are provided or required, trees may be planted between the sidewalk and building line at least three feet from the sidewalk or between the curb and sidewalk,

74. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

provided that the planting strip is a minimum of five feet in width. If no curb or sidewalk is provided, the trees shall be planted on the lot side of any drainage structures.

- (3) Maintenance. Besides conforming to all parts of this subsection, all planting shall be done in accordance with good nursery and landscape practice. The developer shall be responsible for replacing any trees within 18 months of planting, and this shall be assured via a maintenance guarantee. A covenant running with the land shall stipulate that the responsibility for maintenance and replacement of street trees shall be borne by the owner of record.

§ 300-47. Streetlighting.⁷⁵

Streetlights shall be required in all subdivisions in R-1 and R-2 Zoning Districts and may be required in other subdivisions when considered necessary by the Council. All streetlights shall be of such design and spacing as required by the Council in accord with PPL or other generally accepted lighting standards.

§ 300-48. Commercial and industrial subdivisions and land developments.

See Article IX.

§ 300-49. Traffic signs and signals.

Traffic signs and traffic signals shall be required when considered necessary by the Council to ensure safe traffic or pedestrian circulation. All traffic signs and signals shall meet the most current requirements of PennDOT. In the case of traffic signals, the developer, any subsequent owner, or any subsequent property owners' association or similar entity shall be responsible for the long-term operation, maintenance and replacement of the traffic signal and all associated facilities, signs and pavement markings.

§ 300-50. Multifamily dwellings.

In addition to the applicable requirements of this chapter, multifamily dwelling projects shall comply with Chapter 400, Zoning, and all other applicable requirements of the Borough Zoning Ordinance.

§ 300-51. Recreation facility fees.

- A. Purposes. The purpose of this section is to provide adequate active and passive recreational facilities to serve the occupants of new developments and to recognize and accomplish the goals and policies of the Borough's Comprehensive Plan, Recreation Plan or Regional Recreation and Open Space Plan.
- B. Applicability. This section shall apply to any subdivision or land development for which a preliminary plan or a combined preliminary/final plan is required.
- C. Fees. The developer of any subdivision or land development governed by this § 300-51 shall pay a recreation fee in accord with the following.

75. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (1) Fee amount. The fee amount shall be established by resolution of the Borough Council.
 - (a) Fees for dwelling lots and units shall be assessed on a per-lot and per-unit basis.
 - (b) Fees for nonresidential development fees shall be assessed on a per-square-foot-of-indoor-area basis. No fee shall be assessed for buildings of less than 1,000 square feet of floor area, nor for any building or lot which does not require approval under this chapter.
 - (2) Accounting. Any fees collected under this section shall 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.
 - (3) Use of fees. The fees shall be used for Borough or other public recreation facilities located in the Borough. In addition, the Council may commit fees to a recreation area open to the public in an adjacent municipality that would serve the inhabitants of the development that paid the fees. Such fees shall only be used for the acquisition of public open space and related debt payments, development of public recreational facilities, landscaping of public open space, and related engineering and design work.
 - (4) Time limit on use. Upon request of any person who paid any recreation fee, the Borough shall refund such fee, plus interest accumulated thereon from the date of payment, if the Borough had failed to use the fee for the purposes set forth in this § 300-51 within three years from the date such fee was paid.
 - (5) Timing of fees. Fees shall be paid prior to the approval of the final plan. The developer and the Council may mutually agree to provisions in a binding development agreement to enable the payment of all applicable recreation fees prior to the issuance of any building permit within each clearly defined phase of the development. In such a case, the time limitation established in Subsection C(4) above shall not begin until all such fees are paid for all development phases.
- D. Facilities in place of fees. An applicant may submit a written request for a modification of the requirements of this § 300-51 by offering to construct recreation facilities open to the general public within the proposed subdivision or land development or on public parkland. Such modification shall only be approved if the developer clearly proves to the satisfaction of the Council that the facilities will serve a valid public purpose, will be designed following modern standards in a durable manner, and will have an equal or higher value than the fees that would otherwise be required. The Council shall determine whether facilities construction would be in the public interest or whether the payment of fees is required. This determination should, but is not required to, be made at the time of sketch plan review. The Council should, at a minimum, consider the following in this decision:
- (1) Whether the facilities in the proposed location would serve a valid public

purpose.

- (2) Whether the facilities are a desirable addition to an existing public park.
- (3) Whether the proposed facilities meet the objectives and requirements of this § 300-51 and any relevant goals and policies of the Borough's Comprehensive Plan, Recreation Plan or Regional Recreation and Open Space Plan.
- (4) Whether the facilities, if proposed within the development, will be easily accessible to other Borough residents.
- (5) Any recommendations from the Planning Commission, the Borough Engineer, the School District, or the County Parks and Recreation Board.

§ 300-52. Firefighting — adequate and reliable water source.

Each major subdivision or land development shall provide an adequate and reliable water source for firefighting purposes. The provisions for an adequate and reliable water source shall be submitted as part of the subdivision application. Such plans and installations shall be inspected by the Fire Department and shall be approved by the Borough Council. The developer may elect to provide this water source through the establishment of a pressurized water system, static water source, or combination thereof. When utilizing an off-site water source, the developer shall secure a permanent contract with the source owner to provide said water. Water sources shall conform to the requirements set forth in this § 300-52.

A. Pressurized system. When electing to use a pressurized water distribution system, the developer may use a gravity, direct pumping or combination system. Regardless of the type of pressurized system installed, the system shall be installed in compliance with NFPA 24, unless the Borough imposes other specific requirements.

- (1) The flow capacity of the system shall be such that it will maintain a delivery rate of 1,000 gallons per minute and 40 pounds per square inch residual pressure for a two-hour duration. No piping shall be used which is less than six inches in diameter.
- (2) Hydrants shall be of the dry barrel type with two 2 1/2-inch NST male discharges and one 4 1/2-inch male NST discharge. All discharges shall have caps installed. Hydrants shall not be set more than 10 feet from the road edge and shall have the 4 1/2-inch connection facing the roadway. Each hydrant shall be equipped with a curb stop to allow for isolation of the hydrant. Fire hydrants shall be installed with a maximum spacing not to exceed 800 feet. The developer shall provide the Fire Department with a key to operate the curb stops. Hydrant bodies shall be painted bright yellow, with the bonnet and caps painted bright green.
- (3) When pumps are used as part of the distribution system, a reserve power source shall be provided. This power source shall be designed to automatically start when primary power is lost. The developer shall be responsible to provide monthly maintenance and testing of the power system.

- B. Static water sources. When electing to use a static water source, the developer shall ensure that access to the water source is provided within 2,000 feet road distance (not point to point) of any buildable point within the subdivision. This may be met either through the use of ponds, cisterns, or a combination thereof. Regardless of the type of static source provided, the system shall be installed in compliance with NFPA 1231, unless the Borough imposes other specific requirements.
- (1) Static water sources shall be of sufficient capacity to provide an uninterrupted flow of at least 1,500 gallons per minute for a two-hour duration. Dry hydrants shall be installed in static water sources and located as required to meet the two-thousand-foot requirement.
 - (2) The dry hydrant shall be capable of supplying a one-thousand-five-hundred-gallons-per-minute pumper operating at 100% capacity at 150 pounds per square inch through 10 feet of six-inch suction hose. Dry hydrants shall be terminated with a forty-five-degree dry hydrant head with six-inch male NST threads and a cap. The center line of the head shall be three feet from the ground. All piping used in the dry hydrant shall be Schedule 80 PVC, with a minimum diameter of eight inches. All exposed aboveground components shall be primed with a PVC primer to prevent deterioration. The hydrant head shall be connected to the piping with a tapered coupling.
 - (3) The piping for the dry hydrant shall be installed a minimum of three feet below the frost line and average ice depth of the water source. The strainer shall be located below the surface of the water at a depth that is greater than three feet below the average ice depth of the water (and the water surface) and no less than two feet from the bottom of the water source. The strainer shall have a cleanout cap installed for maintenance. The vertical distance from the water surface to the center line of the hydrant head shall not exceed 10 feet.
 - (4) The access road to the dry hydrant shall meet the requirements for minor roads contained in this chapter.

ARTICLE VII
Mobile Home Parks

§ 300-53. Application.

In addition to the other applicable requirements in this chapter, development of new mobile home parks or expansions of existing mobile home parks shall meet the design standards and required improvements set forth in this Article VII and other applicable Borough ordinances.

§ 300-54. Procedures.

A mobile home park or expansion of a mobile home shall be considered a land development as defined by this chapter, and the application for the development of a mobile home park shall be processed in accord with all the procedures established by this chapter for major subdivisions and land developments in addition to the requirements of this Article VII.

§ 300-55. Minimum park size.

A mobile home park shall have a total contiguous land area as required by Chapter 400, Zoning.

§ 300-56. Lot size and density.

Mobile home parks shall be permitted and designed in accord with § 300-39 of this chapter and § 400-24 of the Borough Zoning Ordinance and shall comply with the additional requirements in this Article VII.

- A. Lot size. Each mobile home lot shall have a minimum area of 5,000 square feet for exclusive use of the occupants of the mobile home placed upon the lot. Minimum lot widths shall be 45 feet. Each mobile home lot shall be defined by metes and bounds and shall be shown as such on the development plan, and markers shall be installed at each corner of every lot.
- B. Density and design. The total number of lots in any mobile home park shall not exceed a density of four lots per acre. Density shall be calculated and the mobile home park shall be designed in accord with § 400-24 of the Borough Zoning Ordinance.

§ 300-57. Standards.

In addition to the other applicable standards contained in this chapter, the standards in this § 300-57 shall apply to all mobile home parks.

- A. Location.
 - (1) Floodplain. A mobile home park shall not be located within a one-hundred-year floodplain area as defined by the Federal Flood Insurance Program.
 - (2) Nuisances. The site of any proposed mobile home park shall be free from adverse influence by swamps, marshes, garbage or rubbish disposal areas or

other potential breeding places for insects or rodents, and shall not be subject to any hazard or nuisance, such as excessive noise, vibration, smoke, toxic matter, radiation, heat, odor or glare.

- (3) Slopes. Mobile home sites shall not be located where the average natural slope of the area of the site intended for development exceeds 12%.
- B. Mobile home sites. Each mobile home lot shall be improved to provide a permanent foundation for the placement and tie-down of the mobile home, thereby securing the structure against uplift, sliding, rotation and overturning. Mobile homes shall not be considered placed on a permanent foundation unless wheels have been removed and the home is resting on concrete piers to the frost level with a foundation of poured concrete, block construction or a concrete slab.
- (1) Stability. The mobile home site shall not heave, shift or settle unevenly under the weight of the mobile home, due to frost action, inadequate drainage, vibration or other forces acting on the superstructure.
 - (2) Anchors. The mobile home site shall be provided with anchors and tie-downs, such as cast-in-place concrete "deadmen," eyelets imbedded in concrete foundations or runways, screw augers, arrowhead anchors, or other devices securing the stability of the mobile home. Anchors and tie-downs shall be placed at least at each corner of the mobile home, and each shall be able to sustain a minimum tensile strength of 2,800 pounds.⁷⁶
 - (3) Skirting. All mobile homes shall be enclosed from the bottom of the mobile home to the ground or paving using industry-approved fire-resistant skirting material.
- C. Soil and ground cover. All areas of a mobile home park disturbed during the development process and not covered by improvements shall be stabilized and protected with such vegetative growth as necessary to prevent soil erosion and the emanation of dust during dry weather. Such vegetation shall be maintained by the park owner in such condition as to provide continued soil protection. The requirements of § 300-43 of this chapter shall apply to all mobile home parks.
- D. Stormwater/drainage. Mobile home parks shall be designed to ensure that all surface water is drained in a safe and efficient manner away from mobile home sites. The requirements of § 300-42 of this chapter shall apply to all mobile home parks.
- E. Setbacks, buffer strips and screening.
- (1) Overall property line setbacks. All mobile homes shall be located not less than 75 feet from any existing public road right-of-way and not less than 50 feet from other park property lines.
 - (2) Interior setbacks. All mobile homes shall be located not less than 25 feet from the right-of-way of any park street, common parking area or other common area or structure; 15 feet from any side or rear lot line; and 50 feet from the

76. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

normal high-water mark of any lake, stream or other body of water.

- (3) Accessory structures. Accessory structures, including tool sheds, trash receptacles, patios, porches, garages and bike racks, may be erected within required setback areas, provided that no part of any accessory structure shall be located less than 10 feet from any side lot line and front and rear setbacks are maintained as required for the mobile home.
- (4) Buffers and screening. All mobile home parks shall be required to provide screening such as fences or plant materials along the property boundary line separating the park and any adjacent use. Plantings shall provide an effective screen to a height of five feet at the time of planting and an effective screen to a height of eight feet within five years. These buffer strips shall be properly maintained at all times.

F. Streets, parking and access.

- (1) Streets. Mobile home park streets shall be provided, designed and constructed in accord with § 300-40 and other applicable standards of this chapter. The Borough shall not accept any mobile home park street for dedication.
- (2) Parking. To provide for emergency vehicle access, parking shall not be permitted on roads or drives within the mobile home park, but shall be restricted to designated parking areas either at each mobile home site or at a common location. Off-street parking for two motor vehicles shall be provided at each mobile home lot and off-street common parking areas for additional vehicles of park occupants and guests shall be provided at a rate not less than one space per five mobile home lots. These spaces shall be improved to a grade not greater than 8% and shall be paved with a minimum six inches' depth of select material approved by the Borough Engineer.
- (3) Access. There shall generally be at least two points of ingress and/or egress in each mobile home park from any one public right-of-way (emergency accesses excepted), and all driveways to individual units along a public right-of-way shall front on an interior access drive. Accesses shall be separated by at least 150 feet where they intersect with a public street.
- (4) Lot frontage. Mobile home sites and parking spaces shall have direct access to and frontage on the interior park street system. Mobile home sites and parking spaces shall not front or have access directly to public roads or streets or to private roads or streets passing through the mobile home park and providing access to other parcels or developments.
- (5) Illumination. All mobile home parks shall be furnished with lighting units so spaced and equipped with luminaries placed at such mounting heights as will provide adequate levels of illumination for the safe movement of pedestrians and vehicles at night.

G. Utilities.

- (1) Water supply and sewage disposal. Mobile home parks shall be served by a central water supply and a central sewage disposal system as required by

§ 300-44 of this chapter, and connections shall be made to each mobile home lot and any other wastewater-producing facilities in the mobile home park. No well or sewage disposal system shall be located on an individual mobile home lot.

- (2) Electric, telephone and cable TV. All mobile home lots in proposed mobile home parks shall be provided with underground electric, telephone and TV cable (if available) service. These service systems shall be installed and maintained in accordance with local service company specifications regulating such systems.
 - (3) Central fuel system. Any central fuel supply systems and/or central fuel storage facilities shall be installed in accord with generally accepted design and construction practice and in accord with all applicable state and federal regulations.
- H. Refuse disposal. The storage, collection and disposal of refuse in the mobile home park shall be so managed as to create no health hazards or air pollution. All refuse shall be stored in flytight, watertight, rodentproof containers, which shall be located not more than 150 feet away from any mobile home space. Containers shall be provided in sufficient number and capacity to properly store all refuse as required by the Pennsylvania Department of Environmental Protection. Rubbish shall be collected and disposed of at a facility approved by the Pennsylvania Department of Environmental Protection as frequently as may be necessary to ensure that the containers shall not overflow.
- I. Recreation area. A common recreational area of land, consisting of not less than 10% of the total area of the park, shall be maintained within the park for the common use of park residents only. This area shall generally be suitable for active recreation and shall be of suitable configuration, with less than ten-percent slope and free of hazards, to permit recreational use. Fifty percent of this area shall be designed, equipped and properly maintained for active recreational use in the mobile home park. Plans for development of the recreational area and facilities shall be submitted by the applicant for approval by the Planning Commission.

§ 300-58. Nonresidential uses.

No part of any park shall be used for nonresidential purposes, except such uses that are required for the direct servicing and well-being of park residents and for the management and maintenance of the park.

§ 300-59. Individual mobile homes.

The installation of individual mobile homes not located in a mobile home park shall not require a mobile home park permit. However, a building permit shall be required for the installation of such homes, in accord with applicable Borough ordinances and regulations. Individual mobile homes shall comply with all other applicable Borough ordinances and regulations that govern single-family homes.

§ 300-60. Administration.

A. Permits and license.

- (1) Initial permit. No mobile home park shall be constructed, opened, altered or expanded without the approval of the Borough pursuant to the procedures and standards of this chapter.
- (2) License. In addition to the initial approval, an annual license shall be required for all mobile home parks. Upon approval of the entire final plan and payment of the required fees, the Planning Commission shall issue a mobile home park license to the owner which shall be valid for a period of one year thereafter. Fees for the annual license shall be established by resolution of the Planning Commission.
- (3) Posting of license. There shall be a building at every mobile home park in which the office of the person in charge of the park is located. It shall be the responsibility of the permittee to maintain in such office a copy of the license for the park, the mobile home park register, and one set of the plans for the park, all of which shall be on display to the public.
- (4) Renewal of license. A mobile home park license shall be valid for a one-year period and may be renewed on an annual basis following an inspection by the Planning Commission or its designee to determine continued compliance with this chapter and any conditions of approval.
- (5) Revocation of license. Any mobile home park license is subject to revocation for the violation of any provision of this chapter, any condition of license approval, any other ordinance of the Borough, or of any laws of the Commonwealth of Pennsylvania. If the Borough determines a violation exists, the Borough shall notify the license holder of said violation, and the license holder shall thereafter correct the said violation as directed by the Planning Commission. If the license holder fails to correct the violation as required by the Borough, the Borough shall take action in accord with the enforcement provisions of this chapter.

B. Responsibilities of license holder. It is the duty of the license holder and of the individual in charge of any mobile home park to:

- (1) Keep a register of the names and addresses of all occupants, which shall be open at all times to inspection by officers of the Borough.
- (2) Maintain the mobile home park in a clean, orderly and sanitary condition at all times.
- (3) See that the provisions of this chapter are complied with and report promptly to the proper authorities any violations of this chapter or of any other law that may come to their attention.

C. Compliance of existing mobile home park.

- (1) Application. The regulations of this chapter shall apply to all extensions or enlargements of existing mobile home parks, including cases where the number of mobile home lots is increased even though the total land of the park is not increased. These regulations shall apply in addition to any state

requirements.

- (2) Location. All new and replacement homes shall at a minimum comply with § 300-57B and E.
 - (3) License. Licenses shall be required for existing parks. Within six months of the enactment of this chapter, every owner or operator of a mobile home park in the Borough shall, by letter, apply for a license to operate said park. Such application shall include a statement of the number of mobile homes presently placed in such park and shall be accompanied by a map showing rights-of-way, boundaries of the tract, acreage contained therein, the layout of streets and lots, and existing community facilities. A license to operate for one year shall be issued and regularly renewed regardless of nonconformities, so long as the total number of mobile home lots is not increased and provisions regarding replacement homes are followed.
- D. Inspections. The Borough Planning Commission and other persons it may from time to time designate on its behalf are hereby designated as inspectors for this chapter. Additional inspectors may be designated at the discretion of the Planning Commission.

ARTICLE VIII
Campgrounds and Recreational Vehicle Parks

§ 300-61. General applicability.

In addition to the other applicable requirements in this chapter, the provisions in this Article VIII shall apply to any campground or recreational vehicle (RV) park in the Borough.

§ 300-62. Campgrounds.

- A. Purpose. The purpose of this Article VIII is to assure that all campgrounds and RV parks constructed and operated in the Borough are planned and developed so as to protect the health, safety and welfare of their inhabitants and of the residents of the Borough. As used herein, "campground" shall also include RV park.
- B. Occupancy.
- (1) Campsites shall be used only for camping purposes. No improvement or any recreational vehicle designed for permanent occupancy shall be erected or placed on any campsite. All recreational vehicles in the RV park shall be maintained to meet Pennsylvania Department of Transportation vehicle/trailer registration requirements and in a roadworthy, transportable condition at all times, and any action toward removal of wheels is hereby prohibited. Moreover, no campsite shall be occupied by the owner or any other occupant more than 12 consecutive months, and no campsite shall be the primary and principal residence of the owner or any other occupant; each campsite to be used and occupied (excepting occasional guests) for camping and recreational purposes only by a single household. The Borough may require any owner to remove a recreational vehicle for a period of 24 hours, unless such owner can establish a prior removal within the immediately preceding 12 months. These requirements shall be attached to each campsite by restrictive covenant.⁷⁷
 - (2) In order to prevent permanent occupancy and limit maintenance and policing problems, continuous occupancy of any campsite by one party, vehicle or tent shall be limited to 90 days. The licensee shall be responsible for enforcing this provision. When not in use, all recreational vehicles shall be removed to a common parking or storage area provided by the licensee. Every RV park, except primitive-type camping facilities, shall provide such a common parking or storage area, which shall be improved with a hard surface and provide a minimum of 500 square feet of parking area per campsite created. This shall be considered common area, and no more than two such areas shall be created in any development. Recreational vehicles shall be kept in the common storage area at all times when not in use.
- C. Records. The management of every campground shall be responsible for maintaining accurate records concerning the occupancy of all campsites. The term "management" shall include associations of property owners when such are responsible for maintenance and operation of common facilities. The Borough shall

77. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

have access to and the right to inspect records for evidence of permanent residency or lack thereof. The Borough Planning Commission shall, in addition, have the authority, when any provision of this article is violated, to prohibit the occupancy of any and all campsites in a park until the owners and/or management provides evidence of compliance with these provisions. If any campsite remains occupied seven days following a Borough order prohibiting occupancy, the vehicle or tent may be removed to the common storage area by order of the Planning Commission and at the expense of the individual occupant.

§ 300-63. Procedures.

- A. Land development. A campground or expansion of campground shall be considered a land development as defined by this chapter, and the application for the development of a campground shall be processed in accord with all the procedures established by this chapter for major subdivisions and land developments.
- B. Design. The design of the campground shall conform to the requirements of this chapter and/or applicable state requirements, whichever is greater or more restrictive.

§ 300-64. Minimum parcel size.

A campground shall have a total contiguous land area of not less than 25 acres.

§ 300-65. Campsite size, density and lot width.

- A. RV park. The minimum area of any campsite in an RV park shall be 4,500 square feet, and the gross density shall be no greater than six campsites per acre. Gross density may be measured to include areas developed or planned for common property.
- B. Primitive. The minimum area of any campsite in a primitive-type camping facility shall be 3,500 square feet in recognition of the lesser impact on land disturbance of the natural environment that will be created as compared to sites for recreational vehicles. The gross density of such a development shall be no greater than seven sites per acre.
- C. Density calculation and design. Density shall be calculated, and the RV park shall be designed in accord with § 400-19D of the Borough Zoning Ordinance, using the density factors of this § 300-65.
- D. Lot width. The minimum average lot width for each campsite in an RV camp shall be 50 feet. The minimum average lot width for each campsite in a primitive-type camping facility shall be 45 feet.
- E. Improved area. The area improved for camping sites shall not exceed 50% of the total gross area of the tract being developed as a campground.

§ 300-66. Design standards.

In addition to the other applicable standards contained in this chapter, the design standards in this § 300-66 shall apply to all campgrounds.

A. Location.

- (1) Floodplains. A campground shall not be located within a one-hundred-year floodplain area as defined by the Federal Flood Insurance Program.
- (2) Nuisances. The site of any proposed campground shall be free from adverse influence by swamps, marshes, garbage or rubbish disposal areas or other potential breeding places for insects or rodents, and shall not be subject to any hazard or nuisance, such as excessive noise, vibration, smoke, toxic matter, radiation, heat, odor or glare.
- (3) Slopes. A campground shall not be located where the average natural slope of the area of the site intended for development exceeds 12%.

B. Soil and ground cover.

- (1) Existing vegetation. Existing trees, shrubs and other vegetation shall be preserved and maintained to the greatest extent possible.
- (2) Erosion control. All areas of a campground disturbed during the development process and not covered by improvements shall be stabilized and protected with such vegetative growth as necessary to prevent soil erosion and the emanation of dust during dry weather. Such vegetation shall be maintained by the owner in such condition as to provide continued soil protection. Section 300-43 of this chapter shall apply to all campgrounds.

C. Stormwater/drainage. Campgrounds shall be designed to ensure that all surface water is drained in a safe and efficient manner away from campsites. The requirements of § 300-42 of this chapter shall apply to all campgrounds.

D. Setbacks, buffer strips and screening.

- (1) Overall property line setbacks. No individual campsite shall be located closer than 100 feet to any exterior property line of the campground or from a public road right-of-way. The land between the campsites and the exterior property lines shall have sufficient existing or planted trees and/or shrubbery to screen the campground to a height of six feet from the adjacent lands and to serve as a buffer.
- (2) Interior setbacks. No recreational vehicle or tent shall be placed on a campsite less than:
 - (a) Twenty feet from the front lot line.
 - (b) Twenty feet from the rear lot line.
 - (c) Ten feet from the side lot lines.
 - (d) One hundred feet from the normal high-water mark of any lake, stream or other body of water.

E. Streets, access and parking.

- (1) Streets.

- (a) All two-way streets in campgrounds shall conform to the requirements for minor streets as established in Article VI.
 - (b) One-way streets shall have a minimum right-of-way width of 20 feet and shall be improved with a travelway not less than 15 feet in width and shall otherwise conform to the standards for minor streets as established by Article VI.
 - (c) No campground street may be offered for dedication to the Borough. Construction and maintenance of campground streets shall be the sole responsibility of the developer or operator of the campground.
- (2) Parking.
- (a) Parking shall not be permitted on streets or drives within the campground, but shall be restricted to designated parking areas either at each site or at common locations.
 - (b) All campsites designed for recreational vehicles shall have off-street parking spaces for the recreational vehicle and for one passenger vehicle. The parking spaces shall be level in a longitudinal direction and shall be uniformly crowned in a transverse direction and shall be well-drained. The parking spaces need not be paved, but shall have a minimum depth of six inches of compacted crushed stone, bank-run gravel or shale.
 - (c) All campsites designed for tenting may be provided with on-site parking spaces in accord with § 300-66E(2)(b) or may have a common parking area not over 500 feet from the most distant campsite. Common parking areas shall provide at least 1.5 spaces per campsite. The minimum of each parking space shall be at least nine feet by 18 feet, exclusive of any aisle.
- (3) Access. There shall generally be at least two points of ingress and/or egress for each campground from any one public right-of-way (emergency accesses excepted), and all driveways to individual sites along a public right-of-way shall front on an interior access drive. Accesses shall be separated by at least 150 feet where they intersect with a public street.
- (4) Site frontage. Campground sites and parking spaces shall have direct access to and frontage on the interior park street system. Campsites and parking spaces shall not front or have access directly to public roads or streets or to private roads or streets passing through the campground and providing access to other parcels or developments.

F. Utilities.

- (1) Water supply and sewage disposal. Campgrounds shall be served by a central water supply and a central sewage disposal system in accord with § 300-44 of this chapter.
 - (a) All campsites which are not provided with a connection to a central water supply and a central sewage system shall be located within 300 feet of a bathhouse/toilet facility, which shall be equipped with a water supply, toilets, urinals and lavatories in accordance with Department of

Environmental Protection regulations.

- (b) The campground shall be equipped with sewage dumping stations designed and constructed in accordance with the Department of Environmental Protection requirements.
- G. Refuse disposal. The storage, collection and disposal of refuse in the mobile home park shall be so managed as to create no health hazards or air pollution. All refuse shall be stored in flytight, watertight, rodentproof containers, which shall be located not more than 150 feet away from any campsite space. Containers shall be provided in sufficient number and capacity to properly store all refuse as required by the Pennsylvania Department of Environmental Protection. Rubbish shall be collected and disposed of at a facility approved by the Pennsylvania Department of Environmental Protection as frequently as may be necessary to ensure that the containers shall not overflow.
- H. Recreation area. At least 10% of the parcel shall be suitable for and improved to provide for active recreation for users of the campground. Such active recreation may include, but is not limited to, swimming pools, playgrounds, play fields, ball fields, courts of all types, community buildings and similar facilities. The Planning Commission will determine the adequacy of the proposed facilities for the number of campsites and may require additional facilities as a condition of approval.
- I. Landscaping. A landscaping plan for the proposed project shall be prepared by the developer for review and approval by the Borough. Landscaping shall be considered an improvement for the purposes of regulation by this chapter and shall, at a minimum, provide for the stabilization of any areas on the project parcel where the earth is disturbed and document compliance with the soil erosion and sedimentation control plan.
- J. Other requirements. There shall be provided in each campground such other improvements as the Planning Commission may require, whereby such requirements shall at all times be in the best interest of the public health, safety and general welfare.

§ 300-67. Nonresidential uses.

No part of any campground shall be used for noncamping purposes, except such uses that are required for the direct servicing and well-being of the users of the campground and for the management and maintenance of the campground.

§ 300-68. Other general requirements.

- A. Fences. All property lines shall be kept free and open, and no fences, except as may be required by screening sections or may exist naturally, shall be permitted thereon.
- B. Nuisances. No noxious or offensive activities or nuisances shall be permitted on any campsite.
- C. Animals. No animals shall be kept or maintained on any campsite, except the usual household pets. Pets shall be kept confined so as not to become a nuisance.

- D. Garbage and refuse disposal. No person shall burn trash, garbage or other like refuse on any campsite. All such refuse shall be placed and kept in approved receptacles for the same. No owner shall permit the accumulation of litter or refuse or junk on a campsite.
- E. Camping accessories. Notwithstanding any provisions herein contained to the contrary, picnic tables, benches, storage sheds (not exceeding 120 square feet in area), fire boxes or fireplaces, and similar items of personal property, may be placed on a campsite. All personal property on a campsite shall be maintained in good condition so as not to become unsightly.
- F. Ditches and swales. Each owner shall keep drainage ditches and swales located on his campsite free and unobstructed and in good repair and shall provide for the installation of such culverts upon his campsite as may be reasonably required for proper drainage and shall also prevent erosion on his campsite.
- G. Drilling and mining. No drilling, refining, quarrying or mining operation of any kind shall be permitted on any campsite.
- H. Appurtenances. No permanent external appurtenances, such as additions, carports, cabanas, decks or patios, may be attached to or be placed to serve any travel trailer or other recreational vehicle parked in a campground development, and the removal of wheels or placement of the unit on a foundation is prohibited.

§ 300-69. Compliance of existing campgrounds.

- A. Existing. All the requirements of this Article VIII which govern the operation and/or maintenance of campgrounds and RV parks, including but not limited to occupancy, refuse collection, parking on campground streets, and the requirements of § 300-68, shall apply to all existing campgrounds.
- B. Expansions. The regulations of this Article VIII shall apply to any expansions of existing campgrounds, including increases in the number of campsites even though no addition to total land area is involved.

ARTICLE IX

Commercial and Industrial Subdivisions and Land Developments**§ 300-70. Land developments, and commercial and industrial subdivisions.**

All land developments and commercial and industrial subdivisions shall comply with the applicable requirements of this chapter unless otherwise specified in this article.

§ 300-71. General design and site standards.

Commercial and industrial development areas shall be designed in accord with the four-step design process in § 300-36 with respect to conservation areas and development sites and in consideration of site conditions, to ensure:

- A. Desirable land utilization and aesthetics.
- B. Convenient traffic circulation and parking.
- C. Adequate service, delivery and pickup.
- D. Design coordination with adjacent parcels of land.
- E. The site, when developed, shall be served by an approved water supply system and an approved sanitary sewer system.
- F. Adequate storm drainage facilities shall be provided. Where applicable, detention basins or other stormwater control methods may be required by the Borough.

§ 300-72. Plans.

Proposed plans shall be submitted by the developer showing all information necessary to demonstrate compliance with this chapter, including but not limited to:

- A. All information required by this chapter for major subdivisions and land developments.
- B. Location of all project improvements including:
 - (1) Buildings.
 - (2) Streets, accessways and parking areas.
 - (3) Landscaping and planting strips.
 - (4) Stormwater management facilities.
 - (5) Water supply and distribution systems.
 - (6) Sewage collection and treatment systems.
 - (7) Streetlighting and parking area lighting.
 - (8) Building setbacks from property lines and other improvements shall be specifically shown.

- C. Building construction specifications including floor plans and profiles and showing any common use or ownership areas.
- D. Construction specifications for all other project improvements.
- E. Designated open space areas.

§ 300-73. Lots and blocks.

Lot sizes, lot dimensions, building setbacks shall be governed by Chapter 400, Zoning. Block layout shall be in accord with § 300-39B.

§ 300-74. Streets/roads.

Streets and roads in commercial and industrial developments shall comply with the requirements of § 300-40 and shall be constructed to collector street standards as required in Table VI-1 and Table VI-2.

ARTICLE X
Administration

§ 300-75. Purpose.

This article establishes the procedures for the amendment, administration and enforcement of this chapter.

§ 300-76. Amendment.

Amendments to this chapter shall become effective only after a public hearing held pursuant to public notice in the manner prescribed in the MPC.

§ 300-77. Waivers/modifications.

- A. Intent. The provisions of this chapter are intended as a minimum standard for the protection of the public health, safety and welfare. If the literal compliance with any mandatory provision of these regulations is shown by the applicant, to the satisfaction of the Borough, to be unreasonable or to cause undue hardship as it applies to a particular property, or if the applicant shows that an alternative proposal will allow for equal or better results, the Council may grant a waiver from such mandatory provision so that substantial justice may be done and the public interest secured while permitting the reasonable utilization of the property. However, the granting of a waiver/modification shall not have the effect of making null and void the intent and purpose of this chapter.
- B. Conditions. In granting waivers/modifications the Borough Council may impose such conditions as will, in its judgement, secure substantially the objectives of the standards and requirements of this chapter.
- C. Procedure. All requests for waivers/modifications shall be in writing, shall accompany and be a part of the development application, and shall include:
 - (1) The specific sections of this chapter in question.
 - (2) Provisions for the minimum modification necessary as an alternative to the requirements.
 - (3) Justification for the waiver/modification including the full grounds and facts of unreasonableness or hardship.
- D. Action. If the Council denies the request, the applicant shall be notified, in writing, of the reasons for denial. If the Council grants the request, the final record plan shall include a note which identifies the waiver/modification as granted. In any case, the Council shall keep a written record of all actions on all requests for waivers/modifications.

§ 300-78. Preventive and enforcement remedies.

- A. Preventive remedies.
 - (1) In addition to other remedies, the Borough may institute and maintain appropriate actions by law or in equity to restrain, correct or abate violations,

to prevent unlawful construction, to recover damages and to prevent illegal occupancy of a building, structure or premises. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.

(2) Refusal of permits.

(a) The Borough may refuse to issue any permit or grant any approval necessary to further improve or develop any real property which has been developed or which has resulted from a subdivision of real property in violation of this chapter. This authority to deny such a permit or approval shall apply to any of the following applicants:

- [1] The owner of record at the time of such violation.
- [2] The vendee or lessee of the owner of record at the time of such violation, without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.
- [3] The current owner of record who acquired the property subsequent to the time of violation, without regard as to whether such current owner had actual or constructive knowledge of the violation.
- [4] The vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation, without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.

(b) As an additional condition for issuance of a permit or the granting of an approval to any such owner, current owner, vendee or lessee for the development of any such real property, the Borough may require compliance with the conditions that would have been applicable to the property at the time the applicant acquired an interest in such real property.

(3) In the event that any applicant or owner of any property fails to obtain the proper sewage permit for any required on-site sewage disposal system, or takes such action or causes any action which results in the revocation of any sewage permit by the Borough Sewage Enforcement Officer, the Borough shall have the authority to withhold the issuance of any certificate of use for any structure on the said property and/or to take any appropriate actions by law or in equity to prohibit the occupancy of any such structure.

B. Enforcement remedies.

(1) Any person, partnership or corporation who or which has violated the provisions of this subdivision and land development ordinance or prior enabling laws shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than \$500 plus all court costs, including reasonable attorneys', witness and consultant fees incurred by the Borough as a result thereof. No judgment shall

commence or be imposed, levied or payable until the date of the determination of a violation by the Magisterial District Judge. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the Magisterial District Judge determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the Magisterial District Judge, and thereafter each day that a violation continues shall constitute a separate violation.

- (2) The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per-diem judgment pending a final adjudication of the violation and judgment.
 - (3) Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the Borough the right to commence any action for enforcement pursuant to this section, including but not limited to injunctive relief.
- C. Jurisdiction. Magisterial District Judges shall have initial jurisdiction in proceedings brought under § 300-78B.
- D. Transfer. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.
- E. Construction. In the case of subdivisions, no person shall proceed with any development, site grading or construction of improvements prior to the approval of a preliminary plan in accord with this chapter. In the case of land developments, no person shall proceed with any development, site grading or construction of improvements prior to the authorization to proceed issued in accord with § 300-16H of this chapter. No deeds shall be executed or recorded for the transfer of any lots or units before the Borough has approved the final plan and such plan is filed with the Lackawanna County Recorder of Deeds.

§ 300-79. Fees.

- A. Establishment of fees. Fees to be paid by the applicant shall be established by resolution of the Borough Council to cover all costs incurred by the Borough associated with the processing and review of all plans and documents and all plan and document revisions. Such cost may include, but not be limited to, administrative, engineering and other related consulting service costs.
- B. Application fees. At the time of the filing of any application, the applicant shall pay to the Borough a fee sufficient to cover the administrative costs associated with the review of the application.
- C. Review fees. At the time of the filing of any application, the applicant shall pay to the Borough a fee deemed sufficient to cover the cost of:

- (1) Reviewing engineering details.
 - (2) Inspecting the site for conformance.
 - (3) Evaluating cost estimates of required improvements.
 - (4) Inspection of required improvements during installation.
 - (5) Final inspection or reinspection on completion of installation of required improvements.
 - (6) Fees charged for other related consulting services.
 - (7) Any other review costs incurred by the Borough.
- D. Supplemental fees and adjustment. If the review fees collected at the time of application are not sufficient to cover the cost of engineering services and other related consulting services incurred by the Borough, an additional fee shall be collected from the applicant prior to any action on the plan. If after Borough action on the plan any review fees remain, there shall be a refund made to the applicant of the balance within 30 days of action on the plan.
- E. Disputes. Disputes between the applicant and the Borough regarding fees shall be settled pursuant to §§ 503(1) and 511(g) of the Pennsylvania Municipalities Planning Code, as amended.
- F. Failure to pay fees. Any failure by the applicant to pay any required fees shall be deemed a violation of this chapter and shall make null and void any approval granted by the Borough.

§ 300-80. Records.

The Borough shall keep an accurate public record of its findings, decisions and recommendations relevant to all applications filed for review or approval.

Chapter 315

TAXATION

ARTICLE I

Realty Transfer Tax

[Adopted 6-11-1987 by Ord. No. 3-1987; amended in its entirety at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

§ 315-1. Imposition of tax.

The Borough of Dalton adopts the provisions of Article XI-D of the Tax Reform Code of 1971 (72 P.S. § 8101-D et seq.) and imposes a realty transfer tax as authorized under that article subject to the rate limitations therein. The tax imposed under this section shall be at the rate of 1%.

§ 315-2. Administration.

The tax imposed under § 315-1 and all applicable interest and penalties shall be administered, collected and enforced under the Act of December 31, 1965 (P.L. 1257, No. 511, as amended, known as "The Local Tax Enabling Act," 53 P.S. § 6924.101 et seq.), provided that, if the correct amount of the tax is not paid by the last date prescribed for timely payment, the Borough of Dalton, pursuant to Section 1102-D of the Tax Reform Code of 1971 (72 P.S. § 8102-D), authorizes and directs the Department of Revenue of the Commonwealth of Pennsylvania to determine, collect and enforce the tax, interest and penalties.

§ 315-3. Interest.

Any tax imposed under § 315-1 that is not paid by the date the tax is due shall bear interest as prescribed for interest on delinquent municipal claims under the Act of May 16, 1923 (P.L. 207, No. 153) (53 P.S. § 7101 et seq.), as amended, known as the "Municipal Claims and Tax Liens Act." The interest rate shall be the lesser of the interest rate imposed upon delinquent commonwealth taxes as provided in Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176) (72 P.S. § 806), as amended, known as the "Fiscal Code," or the maximum interest rate permitted under the Municipal Claims and Tax Liens Act for tax claims.

Chapter 322**TREES****GENERAL REFERENCES**

Property maintenance — See Ch. 263.

Zoning — See Ch. 400.

Subdivision and land development — See Ch. 300.

§ 322-1. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings ascribed to them in this section.

PERSON — Any natural person, firm, association, partnership or corporation.

PUBLIC HIGHWAY — Any street, sidewalk, or alley open to the public.

SHADE TREE — Any tree, shrub or woody plant within the right-of-way of any public highway in the Borough of Dalton, or that part of any tree, shrub or other woody plant which extends, or would extend if the plant should fall, within the lines of any public highway.

§ 322-2. Removal of damaged trees.

In the event any shade tree or trees are partially broken or felled by storm or other casualty, the said trees, branches or stumps thereof shall be removed from the public highway by the Borough without charge. Replacement of said shade trees shall be made at the discretion and expense of the person owning the tree.

§ 322-3. Maintenance of trees.

The person owning a shade tree or trees shall trim branches which overhang public highways so that they will not obstruct the light from any streetlight and so that there shall be a clear height of 14 feet above the surface of the highway and eight feet above the sidewalk.

§ 322-4. Removal by owner; cost for trimming or removal by Borough.

When any privately owned shade tree along a public highway and overhanging the same is, in the opinion of the Borough Council, in a condition that endangers the life, health, safety or property of the public, it shall be within the discretion of Borough Council to determine what remedy is necessary and whether or not such tree(s) must be trimmed or removed. The above condition may be a result of disease, decay, insect infestation, or physical damage. In this case, the owner of the shade tree shall be notified in writing of the existence of the dangerous condition and shall be given a reasonable time for trimming or removing the given tree(s). In the event that the owner fails to follow the request of Borough Council, the Borough of Dalton will make arrangements for the dangerous condition to be corrected. The costs of correction will be assessed to the

owner of the shade tree(s).

§ 322-5. Violations and penalties.⁷⁸

Any person who violates or permits a violation of this chapter shall, upon being found liable therefor, pay a fine of not more than \$600, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings.

⁷⁸. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 341**VEHICLES, ABANDONED AND JUNKED****GENERAL REFERENCES**

Property maintenance — See Ch. 263.

§ 341-1. Short title.

This chapter shall be known and may be cited as the "Borough of Dalton Junk Motor Vehicle Ordinance."

§ 341-2. Definitions.

- A. As used in this chapter, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

LESSEE — Owner for the purpose of this chapter when the lessor holds the lessee responsible for maintenance and repairs.

MOTOR VEHICLE — Any type of mechanical device propelled by a motor, in which persons or property may be transported upon public streets or highways, and including trailers or semitrailers pulled thereby.

NUISANCE — Any condition, structure or improvement which shall constitute a danger or potential danger to the health, safety or welfare of the citizens of the Borough of Dalton.

OWNER — The actual owner, agent or custodian of the property on which motor vehicles are stored, whether individual or partnership, association, or corporation.

PERSON — A natural person, firm, partnership, association, corporation, or other legal entity.

- B. In this chapter, the singular shall include the plural; the plural shall include the singular; the masculine shall include the feminine and the neuter.

§ 341-3. Abandoned, junked or motor vehicle nuisances prohibited.

It shall be unlawful for any person, owner or lessee of a motor vehicle to maintain a motor vehicle nuisance upon the private grounds of such person, owner or lessee, or otherwise, within the Borough of Dalton. A motor vehicle nuisance shall include any motor vehicle which is unable to be operated lawfully on the highways of the Commonwealth of Pennsylvania which may have operational or physical deficiencies, including, but not limited to, the following:

- A. Broken windshields, mirrors or other glass, with sharp edges.
- B. One or more flat or open tires or tubes which could permit vermin harborage.

- C. Missing doors, windows, hood, trunk or other body parts which could permit animal harborage.
- D. Any body parts with sharp edges, including holes resulting from rust.
- E. Missing tires resulting in unsafe suspension of the motor vehicle.
- F. Upholstery which is torn or open which could permit animal and/or vermin harborage.
- G. Broken headlamps or taillamps with sharp edges.
- H. Disassembled chassis parts apart from the motor vehicle stored in a disorderly fashion or loose in or on the vehicle.
- I. Protruding sharp objects from the chassis.
- J. Broken vehicle frame suspended from the ground in an unstable manner.
- K. Leaking or damaged oil pan or gas tank which could cause fire or explosion.
- L. Exposed battery containing acid.
- M. Inoperable locking mechanism for doors or trunk.
- N. Open or damaged floorboards, including trunk and fire wall.
- O. Damaged bumpers pulled away from the perimeter of vehicle.
- P. Broken grill with protruding edges.
- Q. Loose or damaged metal trim and clips.
- R. Broken communication equipment antennas.
- S. Suspended on unstable supports.
- T. Such other defects which could threaten the health, safety and welfare of the citizens of the Borough of Dalton.

§ 341-4. Storing of abandoned or junked vehicles prohibited.

It shall be unlawful for any person to store any abandoned or junked motor vehicle or parts thereof on private or public property within the geographical boundaries of the Borough of Dalton, Lackawanna County, Pennsylvania, for any portion of a calendar year. The storage of any motor vehicle or parts thereof, as hereinabove prohibited in this section, for more than one calendar day shall constitute a separate and distinct unlawful act for any portion of each calendar day.

§ 341-5. Violations and penalties.⁷⁹

Any person who violates or permits a violation of this chapter shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be

79. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to undergo imprisonment for not more than 30 days, provided that each violation of any provision of this chapter and each day the same is continued shall be deemed a separate offense.

§ 341-6. Enforcement.

The provisions of this chapter may be enforced by the Dalton Borough Police Department, the Dalton Borough Zoning Officer, or the Dalton Borough Code Enforcement Office, or their respective designees.

§ 341-7. Authority.

This chapter is enacted by the Borough of Dalton under the authority of the Act of Legislature, February 1, (1966) 1965, P.L. 1656, No. 581, known as the Borough Code, § 1005, as recodified and amended (see now 8 Pa.C.S.A. § 1005), and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

Chapter 350

VEHICLES AND TRAFFIC

[Vehicles and traffic legislation of the Borough is enforced by the Borough Police Department. Regulations are on file in the Police Department.]

Chapter 400

ZONING

GENERAL REFERENCES

Adult uses — See Ch. 127.

Dangerous buildings — See Ch. 154.

Comprehensive Plan — See Ch. 166.

Floodplain management — See Ch. 197.

Sewers and sewage disposal — See Ch. 282.

Soil erosion and sediment control — See Ch. 286.

Solid waste — See Ch. 290.

Stormwater management — See Ch. 292.

Streets and sidewalks — See Ch. 294.

Subdivision and land development — See Ch. 300.

Trees — See Ch. 322.

Abandoned or junked vehicles — See Ch. 341.

ARTICLE I
General Provisions

§ 400-1. Adoption and conflict.

The Dalton Borough Zoning Ordinance of August 1990 (Ordinance No. 3-1990), as amended, is hereby amended and restated in its entirety as hereinafter set forth. This Zoning Ordinance is not intended to and shall not be construed to affect or change any other ordinance, code or regulation of the Borough of Dalton. If any other ordinance, code or regulation of the Borough of Dalton is in conflict or inconsistent with the requirements of this chapter, the most restrictive standards and provisions shall apply.

§ 400-2. Title and short title.

- A. Title. An ordinance permitting, prohibiting, regulating, restricting, and determining the uses of land, watercourses, and other bodies of water; the size, height, bulk, location, erection, construction, alteration, razing, removal and use of structures; the areas and dimensions of land and bodies of water to be occupied by uses and structures as well as courts, yards; and other open spaces and distances to be left unoccupied by uses and structures; the density of population and intensity of use; creating zoning districts and establishing the boundaries thereof; authorizing the appointment of a Zoning Officer; creating a zoning hearing board; and providing for the administration, amendment, and enforcement of the ordinance, including the imposition of penalties.
- B. Short title. This chapter shall be known and may be cited as the "Dalton Borough Zoning Ordinance."

§ 400-3. Purpose.

This chapter is adopted in accordance with an overall land use control program and with consideration for the character of the municipality, its various parts and the suitability of the various parts for particular uses and structures. This chapter is enacted for the following purposes:

- A. To promote, protect and facilitate one or more of the following: the public health, safety, morals, general welfare; coordinated and practical community development; density of population; civil defense and disaster evacuation, airports, and national defense facilities; the provisions of adequate light and air; police protection; vehicle parking and loading space; transportation; historic resources; natural resources, agricultural land and uses; the safe use of natural or artificial bodies of water, boat docks and related facilities; reliable, safe and adequate water supplies; safe and adequate sewerage disposal, schools, public grounds and other public requirements and other purposes set forth in the Pennsylvania Municipalities Planning Code.⁸⁰
- B. To prevent one or more of the following: overcrowding of land, watercourses and other bodies of water; blight; danger and congestion in travel and transportation; loss of health, life or property from fire, flood, panic or other dangers.

80. Editor's Note: See 53 P.S. § 10101 et seq.

- C. To preserve prime agriculture and farmland considering topography, soil type and classification, and present use.
- D. To provide for the use of land within the municipality for residential housing of various dwelling types encompassing all basic forms of housing, including single-family and two-family dwellings, and a reasonable range of multifamily dwellings in various arrangements, mobile homes and mobile home parks; provided, however, that no zoning ordinance shall be deemed invalid for the failure to provide for any other specific dwelling type.
- E. To accommodate reasonable overall community growth, including population and employment growth and opportunities for development of a variety of residential dwelling types and nonresidential uses.

§ 400-4. Interpretation.

In interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, morals and the general welfare of the Borough and its citizens. It is not intended to interfere with or abrogate or annul other rules, regulations or ordinances of the Borough except that, where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of a building, or requires larger open spaces than are imposed by such other rules, regulations or ordinances, the provisions of this chapter shall control.

ARTICLE II
Community Development Objectives and Goals

§ 400-5. General community development objectives.

This statement of the community development objectives is included under the authority of Section 606 of the Pennsylvania Municipalities Planning Code.⁸¹ The community development objectives include, but are not limited to, the following:

- A. To achieve the best use of the land within the Borough, ensuring that varying use of land and water bodies will complement one another and thus improve the economic, social, and aesthetic character of the community.
- B. To establish realistic population densities in order to ensure health standards, privacy and open space and in order to provide utilities, police protection, and community services and facilities in the most convenient and efficient manner.
- C. To maintain and improve the road system for better internal circulation and movement of through traffic, which will facilitate the efficient and safe movement of people and goods.
- D. To guide the location of future development and establish developmental standards in such a way that negative impacts on the natural environment and natural resources are minimized, and to minimize existing and future water, air, land and noise pollution.
- E. To provide the opportunity for a wide range and variety of housing types to meet the needs of all Borough residents: newly-formed households, growing families and senior citizens.
- F. To update and revise planning goals and objectives and the operational tools necessary for implementation in light of new data and changing conditions.
- G. To expand local business and strengthen the economy by encouraging well-planned commercial, industrial, residential and recreational growth which will provide for local employment, shopping facilities, and recreational opportunities, which in turn will strengthen the local tax base.
- H. To strive for coordination between policies, plans and programs in the community through cooperation among governing officials, community interest groups, and the general populace.

§ 400-6. Comprehensive Plan goals and objectives.

In addition to the general community development objectives set forth in § 400-5, this chapter is intended to implement the goals and objectives contained in the Borough Comprehensive Plan and any multimunicipal comprehensive plan or open space plan which may be adopted by the Borough.

81. Editor's Note: See 53 P.S. § 10606.

ARTICLE III Terminology

§ 400-7. Rules of construction.

The following rules of construction shall apply to this chapter:

- A. For the purpose of this chapter, certain terms and words are herein defined. Whenever used in this chapter, they shall have the meanings indicated in this article, except where context indicates a different meaning.
- B. The particular shall control the general.
- C. The word "shall" and "must" are mandatory and not discretionary. The word "may" is permissive.
- D. Words used in the present sense shall include the future; words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- E. The phrase "used for" includes "arranged for", "designed for", "intended for" and/or "occupied for."
- F. The word "person" includes "individual," "profit or nonprofit organization," "partnership," "company," "unincorporated association," "corporation," or other similar entities.

§ 400-8. Terms, phrases and words not defined.

When terms, phrases or words are not defined herein they shall have their ordinarily accepted meanings or such as the context may imply.

§ 400-9. Definitions.

For the purpose of this chapter, the following words, terms and phrases shall have the meanings herein indicated:

ABANDONED OR JUNKED VEHICLE — Any vehicle not stored in a fully enclosed building which is not in good operating and roadworthy condition or which meets the definition of motor vehicle nuisance in Borough Ordinance No. 5 of 2000.⁸²

ABUSED PERSON SHELTER — A nonprofit residential use in which rooms are provided to serve as temporary safe and supportive environment for persons who, because of actual or threatened physical or mental abuse, are forced to leave their previous living arrangement. Such facilities shall be designed to provide in-house living for persons only until a safe, permanent living arrangement can be obtained.

ACCESS POINT — One combined entrance/exit point or one clearly defined entrance point, or one clearly defined entrance point separated from another clearly defined exit point. This term shall not include accessways or driveways that are strictly and clearly limited to use by only emergency vehicles; such accesses are permitted by right as needed.

82. Editor's Note: See § 341-3 of the Code.

ACCESSORY USE OR STRUCTURE — A use of land or of a structure or portion thereof incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use. A portion of a principal building used for an accessory use shall not be considered an accessory structure.

ADULT ARCADE — Any place to which the public is permitted or invited, wherein coin-operated or token-operated or electronically, electrically or mechanically controlled still- or motion-picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas. An adult arcade shall be considered an adult business for the purpose of this chapter.

ADULT BOOKSTORE or ADULT VIDEO STORE —

- A. A commercial establishment which, as one of its principal business purposes or as a substantial part of its business, offers for sale or rental, for any form of consideration, any one or more of the following:
 - (1) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes, or video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
 - (2) Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.
- B. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as "adult bookstore" or "adult video store." Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas.
- C. The term "adult bookstore" shall include but not be limited to an adult video store, and all such uses shall be considered an adult business for the purpose of this chapter.

ADULT BUSINESS — Any of the following:

- A. A use of a building or land for a business which has obscene or erotic materials as a substantial or significant portion of its stock-in-trade.
- B. A use of a building or land for a business which involves the sale; lease, trade, gift or display of drug paraphernalia as a substantial or significant portion of its stock-in-trade.
- C. Any nightclub, bar, restaurant, arcade, theater or any other establishment that conducts live performances as a principal part of its business that are characterized by the exposure of specified anatomical areas or by specified sexual activities, or films, motion pictures, video cassettes, slides or other photographic reproductions

in which a substantial portion of the total presentation time is devoted to the showing of material that is characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas, or where any specified sexual activities are conducted for economic gain or any other form of consideration.

D. Any of the following as defined in this Article III:

- (1) Adult arcade.
- (2) Adult bookstore or adult video store.
- (3) Adult live entertainment use or facility.
- (4) Adult motel.
- (5) Adult motion-picture theater.
- (6) Adult theater.
- (7) Escort agency.
- (8) Massage parlor.
- (9) Nude model studio.
- (10) Sexual encounter center.

ADULT CARE FACILITY — See "health facility."

ADULT LIVE ENTERTAINMENT USE OR FACILITY —

- A. A commercial use (which can include, but is not limited to, a use selling food or beverages) including live entertainment involving:
- (1) Persons (which may include, but is not limited to, waiters, waitresses, dancers, clerks, bartenders, contractors or others) appearing in a state of nudity; or
 - (2) Live performances which are characterized by the exposure of specified anatomical areas or simulated or actual specified sexual activities; or
 - (3) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- B. An adult live entertainment use or facility shall be considered an adult business for the purpose of this chapter.

ADULT MOTEL —

- A. A hotel, motel or similar commercial establishment, which:
- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or

(2) Offers sleeping rooms for rent three or more times in one calendar day.

B. An adult motel shall be considered an adult business for the purpose of this chapter.

ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas. An adult motion-picture theater shall be considered an adult business for the purpose of this chapter.

ADULT THEATER — A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities. An adult theater shall be considered an adult business for the purpose of this chapter.

AGRICULTURAL USE — The use of any parcel of land for economic gain in the raising of agricultural products, livestock, poultry and/or dairy products. It includes necessary structures within the limits of the parcel and the storage of equipment necessary for production. It excludes the raising of fur-bearing animals, riding academies, livery or boarding stables and dog kennels; and excluding the disposal or use of sludge, septage or similar waste products.

AGRICULTURE PRODUCTS PROCESSING — An industry that involves the processing of raw agricultural products and transforming those products into a more refined, prepared or marketable state. Includes, but is not limited to, such uses as tanneries, dairies and food canning and freezing operations.

AIRPORT — In general, any area of land or water which is used, or intended to be used, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended to be used, for airport buildings or air navigation facilities or rights-of-way, together with all airport buildings and facilities thereon, excluding helicopters and other vertical land/takeoff aircraft.⁸³

ALTERATIONS — As applied to a building or structure, means any change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

AMUSEMENT ARCADE — A building or part of a building in which five or more pinball machines, video games, or other similar player-operated amusement devices are maintained. The use of less than five such devices shall be permitted as an accessory use to any lawful principal commercial use. Classified as a "service establishment."

AMUSEMENT PARK — A commercially operated park or facility with various devices for entertainment, including but not limited to rides, games, electronic games and similar devices, food stands and other associated facilities. Classified as a "recreational facility, private."

APARTMENT — See "dwelling."

APPLICANT — An individual, trustee, executor, other fiduciary, corporation, firm,

83. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

partnership, association, organization or other entity acting as a unit, and his/her/its heirs, successors and assigns, which is seeking an approval or permit pursuant to this chapter.

ARCHERY RANGE, INDOOR — See "recreational facility, private."

ARCHERY RANGE; OUTDOOR — Any area not within a fully enclosed building used for the shooting of arrows for recreational or training purposes, including but not limited to target shooting ranges and target shooting courses. Any such commercial operation, any such area operated by any private nonprofit entity, any community association, any such area operated by any sportsmen's, recreation or fraternal club or association with 25 or more members, and any such area which is used or is intended to be used for more than five hours in any one week shall be considered an outdoor archery range for the purposes of this chapter. Classified as a "recreational facility, private."

ASSISTED CARE DWELLING UNIT FOR RELATIVE — A living area attached to the principal dwelling unit or separate mobile home especially erected for and limited to the temporary occupancy by a person who is "related" (see definition) to the permanent residents of the principal dwelling unit on the parcel. Such use shall be restricted to a relative who needs such accommodations because of old age, developmental disability, illness, mental illness that does not threaten physical harm to others, or physical handicap.⁸⁴

BANK — An establishment for the custody, loan, exchange or issue of money, for the extension of credit, and for facilitating the transmission of funds. Classified as a "service establishment."

BASEMENT — An enclosed floor area partly or wholly underground, other than a building which is completely underground.

BED-AND-BREAKFAST — Any single-family dwelling in which more than three persons, either individually or as families, are housed or lodged for hire, with meals normally included as a part of the services rendered; shall be restricted to transient visitors to the area.

BETTING USE — A use where lawful gambling activities are conducted, including but not limited to off-track pari-mutuel betting. This term shall not include betting under the state lottery programs or betting under the "small games of chance" provisions of state law, which shall instead be regulated under the regulations applicable to the principal use of the property (such as a "membership club").

BOARDINGHOUSE or LODGING HOUSE — Any dwelling in which more than three persons, either individually or as families, are housed or lodged for hire with meals normally, but not necessarily, included as a part of the services rendered.

BOROUGH FACILITIES AND USES — Any building, structure, service or use under the direct jurisdiction of Dalton Borough, Lackawanna County, Pennsylvania.

BUFFER — A strip of land that separates one use from another use or feature and is not occupied by any building, parking, outdoor storage or any use other than open space or approved pedestrian pathways. It is used to provide separation between incompatible uses to effect a visual barrier, reduce noise, block physical passage between uses, and reduce noise, dust and litter. The separation may be effected by fencing, dense vegetative planting, the provision of additional setback distances, berms, or a combination thereof,

84. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

and in general widths of buffers are increased as the density or opaqueness of the barrier decreases. A buffer yard may be a part of the minimum setback distance but land within an existing street right-of-way shall not be used to meet a buffer yard requirement.

BUILDING — Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, services, goods or materials of any kind or nature.

BUILDING HEIGHT — The vertical distance of a building measured from the lowest exposed portion of the building to the highest point of the uppermost part of the building. (See § 400-15D.)

BUILDING, PRINCIPAL — A building in which is conducted the main or principal use of the lot on which said building is situated.

BULK FUEL STORAGE FACILITY — Any facility where fuel, including but not limited to kerosene, home heating oil, gasoline and propane, is stored in large volume tanks for distribution to retail or wholesale establishments.

CAMPGROUND or RECREATIONAL VEHICLE (RV) PARK — Regulated as travel trailer parks and campgrounds by the Borough Subdivision and Land Development Ordinance. See Chapter 300, Subdivision and Land Development, for definition.

CAR WASH — Any building or premises or portions thereof used for washing automobiles for commercial purposes.

CARPORT — A roofed building intended for the storage of one or more motor vehicles, but which is not enclosed on all sides by walls or doors. If any portion of a carport is attached to a principal building, it shall be considered to be part of that building.

CEMETERY — Land or buildings used for the burial of deceased humans or animals. The interment or scattering of remains of properly cremated humans or animals is not regulated by this chapter.

CLEAR SIGHT TRIANGLE — An area of unobstructed vision at a street intersection(s) defined by lines of sight between points at a given distance from the intersecting street right-of-way lines.

CLUB/LODGE, PRIVATE — An area of land or building used by a recreational, civic, social, fraternal, religious, political or labor union association of persons for meetings and routine socializing and recreation that are limited to bona fide members and their occasional guests, and persons specifically invited to special celebrations, but which is not routinely open to members of the general public and which is not primarily operated as a for-profit business. The club shall involve a meaningful and substantial membership system, as opposed to a token system. This use shall not include a target range for outdoor shooting, boardinghouse, a tavern, a restaurant or an auditorium unless that particular use is permitted in that district and the requirements of that use are met.

COMMERCIAL USE — An occupation, employment or enterprise carried on for profit by the owner, lessee or licensee.

COMMON AREA — All of the real property and improvements dedicated for the common use and enjoyment of the residents of a particular development, including, but not limited to, open land, development improvements, common facilities, and recreation area.

COMMUNICATIONS ANTENNA — Any device used for the transmission or reception of radio, television, wireless telephone, pager, commercial mobile radio service or any other wireless communications signals, including without limitation omnidirectional or whip antennas and directional or panel antennas, owned or operated by any person or entity licensed by the Federal Communications Commission (FCC) to operate such device. This definition shall not include:

- A. Industrial, scientific and medical equipment as regulated by the Federal Communications Commission in 47 CFR 18.
- B. Military and government radar antennas and associated communication towers used for navigational purposes as regulated by 47 CFR 87.
- C. Amateur (ham) and citizen band transmitting and receiving antennas and associated communication towers as regulated by 47 CFR 97 and 47 CFR 95, respectively, and which are less than 100 feet in height.
- D. Radio transceivers normally hand-held or installed in a vehicle, such as an automobile, truck, trailer or watercraft.
- E. A radio frequency machine which is designated and marketed as a consumer product, such as microwave ovens and radio control toys.
- F. Private-residence-mounted satellite dishes or television antennas.

COMMUNICATIONS EQUIPMENT BUILDING — An unmanned building or cabinet containing communications equipment required for the operation of communications antennas and covering an area on the ground not greater than 250 square feet.

COMMUNICATIONS TOWER — A structure other than a building, such as a monopole, self-supporting or guy tower, designed and used to support communications antennas.

COMMUNICATIONS TOWER HEIGHT — The vertical distance measured from the ground level to the highest point on a communications tower, including antennas mounted on the tower.

COMPREHENSIVE PLAN — The Dalton Borough Comprehensive Plan, including all maps, charts and textual matter.⁸⁵

CONDITIONAL USE — A use which is not appropriate to a particular zone district as a whole, but which may be suitable in certain localities within the district only when specific conditions and factors prescribed for such cases within this chapter are present. Conditional uses are allowed or denied by the Borough after recommendations by the Planning Commission.

CONSTRUCTION — The construction, reconstruction, renovation, repair, extension, expansion, alteration or relocation of a building or structure, including the placement of manufactured homes.

CONTRACTOR'S YARD — Any premises used as the base of operation by any tradesman or contractor for the storage of equipment, vehicles and supplies.

CONVENIENCE STORE — A one-story, retail store that is designed and stocked to

85. Editor's Note: See Ch. 166, Comprehensive Plan.

sell primarily food, beverages and other household supplies to customers who purchase only a relatively few items (in contrast to a "supermarket"); it may also include the sale of gasoline but shall not include the repair or service of vehicles. Classified as a "retail establishment."

CORRAL — An enclosure for confining livestock and which is typically attached to or situated in close proximity to a stable or barn, as contrasted to a pasture.

COUNTRY CLUB — A recreational property owned and managed by a membership organization and including recreational facilities, restaurant and meeting rooms. Classified as a "recreational facility, private."

CREMATORIUM — A furnace or establishment for the incineration of corpses.

CROP PRODUCTION — An agricultural use involving the use of land for the raising of cultivated plants or agricultural produce such as grain, vegetables, silage or fruit. The definition excludes commercial greenhouses and commercial nurseries as defined by this chapter.

DAY CARE, ADULT — A use providing supervised care and assistance primarily to persons who are over age 60 and not in good physical health or suffering from Alzheimer's disease or are developmentally handicapped and/or are physically handicapped and who need such daily assistance because of such condition. This use shall not include persons who need oversight because of behavior that is criminal or violent. This use may involve occasional overnight stays but shall not primarily be a residential use. The use shall involve typical stays of less than a total of 60 hours per week per person.

DAY CARE, CHILD — A use involving the supervised care of children under age 16 outside of the children's own home primarily for periods of less than 18 hours during the average day. This use may also include educational programs that are supplementary to state-required education, including a nursery school. The following three types of day care are permitted without regulation by ordinance: 1) care of children by their own relatives and 2) care of children within a place of worship during regularly scheduled weekly religious services. (See also the definition of "day care, adult.")

- A. **CHILD) DAY CARE, AS AN ACCESSORY USE** — A type of day-care use that provides care for six or fewer children at one time who are not relatives of the caregiver.
- B. **CHILD) DAY-CARE CENTER, AS A PRINCIPAL USE** — A type of day-care use that provides care for seven or more children at any one time who are not relatives of the primary operator.

DECK — An elevated (more than six inches) attached accessory structure constructed of wood with no walls or roof. As an attached accessory structure, it must meet the required setbacks for the principal building.

DENSITY — The total number of dwelling units proposed on a lot divided by the "lot area", unless otherwise stated.

DETACHED BUILDING — A building that is surrounded on all sides by open yards and that is not attached to any other building.

DETENTION FACILITY — A publicly operated or sponsored facility used to house

and/or rehabilitate individuals detained, sentenced by, or under the jurisdiction of the criminal justice system, including but not limited to jails, prisons, penitentiaries, reformatories, halfway houses and similar facilities.

DEVELOPER — Any landowner, agent of such owner, or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, the placement of manufactured homes, streets and other paving, utilities, filling, grading, excavation, mining, dredging or drilling operations and the subdivision of land.

DISTRICT (or ZONING DISTRICT) — A land area within the Borough within which certain uniform regulations and requirements apply under the provisions of this chapter.

DRIVE-IN THEATER — An area of land which may include accessory uses such as the sale of snacks and which is devoted to the showing of motion pictures which are viewed by persons in vehicles. Classified as a "theater."

DRIVEWAY — A privately owned, constructed and maintained vehicular access from a street or access drive to only one dwelling unit, commercial unit, institutional or industrial principal use.

DRUG PARAPHERNALIA — Any objects, devices, instruments, apparatus or contrivances, whose primary and traditionally exclusive use is involved with the illegal use of any and all controlled substances under Pennsylvania law.

DWELLING — A structure or portion thereof which is used exclusively for human habitation.

DWELLING, MULTIFAMILY — A building or buildings designed for occupancy by three or more families living independently of each other in separate dwelling units. The term "multifamily dwelling" shall include condominium as well as noncondominium housing units, including the following construction types: (See also definition of "multifamily project.")

- A. **CONVERSION APARTMENTS** — A new dwelling unit created within an existing building which creates three or more units.
- B. **GARDEN APARTMENT** — A multifamily dwelling not exceeding 2 1/2 stories in height and containing three or more dwelling units which are located one over the other and which, when more than three units are utilized, are attached side by side through the use of common party walls, and which shall have side yards adjacent to each first-story end unit. Each dwelling unit is accessible by a common stairwell.
- C. **TOWNHOUSE** — A multifamily dwelling of three or more dwelling units of no more than 2 1/2 stories in height, in which each unit has its own front and rear accesses to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common fire-resistant walls without openings.
- D. **APARTMENT BUILDING** — A multifamily dwelling containing dwelling units having only one floor and typically with an entrance door to a common hallway shared by other dwelling units.

DWELLING, MULTIFAMILY PROJECT — See definition of "multifamily project."

DWELLING, SINGLE-FAMILY — A dwelling unit detached from any other dwelling unit accommodating a single family and having a front, rear and two side yards.

DWELLING, TWO-FAMILY — A dwelling accommodating two families either with units which are attached side by side through the use of a party wall and having one side yard adjacent to each dwelling unit or upstairs/downstairs units. A two-family dwelling in a multifamily project shall be considered a townhouse for the purposes of regulation by this chapter. (See definition of "multifamily project" and § 400-21.)

DWELLING UNIT — A single habitable living unit including a kitchen, sleeping facilities, and a separate bath and toilet, designed as a household unit for extended periods of occupancy for living and sleeping purposes by not more than one family at a time.

EARTH DISTURBANCE ACTIVITY — Any construction or other activity which disturbs the surface of the land, including but not limited to excavations, embankments, land development, subdivision development, mineral extraction, and the moving, depositing or storing of soil, rock or earth.

EASEMENT — Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of the owner's property.

ELECTRONIC NOTICE — Notice given by a municipality through the Internet of the time and place of a public hearing and the particular nature of the matter to be considered at the hearing, pursuant to 53 P.S. § 10109.⁸⁶

ESCORT — A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY — A person or business association or establishment which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration. An escort agency shall be considered an adult business for the purposes of this chapter.

ESSENTIAL SERVICES — Municipal or utility facilities that do not require enclosure in a building which are necessary for the public health and safety and which are routine, customary and appropriate to the character of the area in which proposed, including such facilities as poles, towers, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment. Buildings, sewage treatment plants, solid waste disposal facilities, commercial communications towers, utility company offices, storage of trucks or equipment, and bulk storage, and any commercial communications devices and/or facilities not specifically regulated by the Pennsylvania Public Utility Commission shall not be considered essential services. (For essential services requiring enclosure in a building, see "semipublic building or use.")

EXERCISE CLUB — A facility that offers indoor or outdoor recreational facilities, such as the following: weight rooms, exercise equipment, nonhousehold pool and racquetball courts. Classified as a "service establishment."

86. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

FAMILY — One or more persons living in a single dwelling unit functioning as a common household unit sharing household expenses and sharing joint use of the entire dwelling unit. If a dwelling unit is rented, in order to qualify as a family there shall not be more than one lease among all of the occupants. (See provisions in § 400-23 regarding maximum number of unrelated persons within a group home. A treatment center shall not be considered a family or a group home. See also the definition of a "dwelling unit.")

FENCE — A man-made barrier placed or arranged as a line of demarcation, an enclosure or a visual barrier, and which is constructed of wood, chain-link, metal, fiberglass, vinyl or aluminum and/or plastic inserts. Man-made barriers constructed principally of masonry, concrete, cinder block or similar mostly solid materials shall be considered a wall. The term "wall" does not include engineered retaining walls, which are permitted uses as needed in all districts. The terms "fence" and "wall" do not include hedges, trees or shrubs.

FLEA MARKET — An occasional or periodic sales activity held outside a fully enclosed building, where stalls or sales areas are set aside and rented or otherwise provided and which are intended for use by one or more unrelated individuals to sell articles that are either homemade, homegrown, handcrafted, old, obsolete or antique, and may include the selling of goods at retail by businesses or individuals who are generally engaged in retail trade. Flea markets shall not include any operation which involves the sale of any obscene or pornographic material or any activity included in the definition of "adult business" contained in this chapter.

FORESTRY ENTERPRISE — The management of forests and timberlands when practiced in accord with accepted silvicultural principles, through developing, cultivating, harvesting, transporting and selling trees for commercial purposes, which does not involve any of the following: a land development, the operation of a sawmill, or the operation of any other wood manufacturing business.

FUNERAL PARLOR — A building or part thereof used for human funeral services. Such building may contain space and facilities for: a) embalming and the performance of other services used in preparation of the dead for burial; b) the performance of autopsies and other surgical procedures; c) the storage of caskets, funeral urns, and other related funeral supplies; and d) the storage of funeral vehicles; but shall not include facilities for cremation. Where a funeral parlor is permitted, a funeral chapel shall also be permitted.

GARAGE, PRIVATE PARKING — A building or portion thereof used only for the storage of automobiles by the families resident upon the premises or by individuals residing in the immediate vicinity of such storage facilities.

GARDEN CENTER, RETAIL — A retail establishment engaged in the sale of ornamental trees, shrubs and plants and supplies for gardening and landscaping. Classified as a "retail establishment."

GASOLINE SERVICE STATION — A structure, building or area of land or any portion thereof that is used for the sale of gasoline and oil or any other motor vehicle fuel and/or other lubricating substance, which may or may not include facilities for lubricating, washing and sale of accessories, but not including the painting and/or body work thereof and other vehicle and equipment repair operations as defined by this chapter. Any business or industry dispensing gasoline and servicing vehicles only for its own use will not be deemed to be a gasoline service station.

GOLF COURSE — A tract of land for playing golf, improved with trees, greens,

fairways, hazards, and which may include clubhouses and shag ranges, but does not include miniature golf courses or golf driving ranges. Classified as a "recreational facility, private."

GOLF COURSE, MINIATURE — A novelty version of golf played with a putter and golf ball on a miniature course, typically with artificial playing surfaces, and including obstacles such as bridges and tunnels. Classified as a "recreational facility, private."

GOLF DRIVING RANGE — A facility arranged with golf tees and used for longer range play of golf balls, where balls are supplied for a fee. It may also include a putting green. Classified as a "recreational facility, private."

GOOD OPERATING AND ROADWORTHY CONDITION — A vehicle having both a current and valid registration and current and valid inspection sticker as required by the motor vehicle laws of the Commonwealth of Pennsylvania or, if lacking a registration and/or inspection sticker, is in full and complete working order and condition and, but for not having said current registration and inspection sticker, could be safely and legally operated on a public roadway. Registrations and inspections which have been expired for less than 60 days shall be considered current for the purposes of this definition.

GREENHOUSE, COMMERCIAL — A structure, typically constructed of metal or wood framework and covered with glass or plastic, used for the propagation of plants for wholesale distribution, and including associated structures for office space and storage but not including retail sales of any products or services.

GREENHOUSE, PRIVATE — A detached accessory structure, typically constructed of metal or wood framework and covered with glass or plastic, used for private use.

GROSS FLOOR AREA — The sum of the total horizontal areas of the several floors of a building measured from the exterior face of exterior walls or from the center line of a wall separating two buildings, but not including interior parking spaces, loading space for vehicles, any space where the floor-to-ceiling height is less than six feet, elevator shafts, common stairwells in an apartment building, and unenclosed porches, decks and breezeways.

GROUP HOME — The use of any lawful dwelling unit which meets all of the following criteria:

- A. Involves the care of the maximum number of persons permitted by the group home standards of § 400-23 and meets all other standards of such section.
- B. Involves persons functioning as a common household.
- C. Involves providing nonroutine support services and oversight to persons who need such assistance to avoid being placed within an institution, because of physical disability, old age, mental retardation or other handicap* as defined by applicable federal law.
- D. Does not meet the definition of a treatment center/clinic.
- E. Does not involve the housing or treatment of persons who could reasonably be considered a threat to the physical safety of others.

- * NOTE: As of 1992, the Federal Fair Housing Act⁸⁷ defined "handicap" as follows: "1) a physical or mental impairment which substantially limits one or more of such person's major life activities; 2) a record of having such an impairment; or 3) being regarded as having such an impairment, but such term does not include current illegal use of or addiction to a controlled substance as defined in Section 802 of Title 21 of the Criminal Code."⁸⁸

NOTE: A use that would otherwise meet the definition of "group home," but which includes more than the permitted number of residents, shall be considered an "institutional group home," which is a distinct use.

HABITABLE INDOOR HEATED FLOOR AREA — In relation to minimum dwelling size, the sum of the total horizontal areas of the several floors of a dwelling unit measured from the interior face of walls, but not including interior parking spaces, loading space for vehicles, any space where the floor-to-ceiling height is less than six feet, elevator shafts, common stairwells in an apartment building, and unenclosed porches, decks and breezeways or any area which is not fully heated for human habitation.

HALFWAY HOUSE — A licensed home for inmates on release from more restrictive custodial confinement or initially placed in lieu of such more restrictive custodial confinement, wherein supervision, rehabilitation and counseling are provided to mainstream residents back into society, enabling them to live independently. Such placement is pursuant to the authority of the State Department of Corrections. Considered a "detention facility" for purposes of regulation by this chapter.

HEALTH FACILITIES — Publicly or privately operated establishments engaged in providing services for human health maintenance, including hospitals, medical clinics, nursing homes, adult care facilities and personal care homes, but not including treatment centers/clinics or abused person shelters as defined by this chapter.

HELIPORT — An area used for the takeoff and landing of helicopters and other vertical land/takeoff aircraft, together with any related support facilities such as for maintenance, refueling and storage. This chapter is not intended to regulate the nonroutine emergency landing and take-off of aircraft to pickup seriously injured or ill persons.

- A. **PUBLIC HELIPORT** — A heliport that does not meet the definition of a "private heliport."
- B. **PRIVATE HELIPORT** — A heliport limited to a maximum total of 15 flights or takeoffs in any seven-day period (in addition to flights necessary for emergency medical purposes) and that is not available for use by the general public. This is also known as a "helistop."

HOME OCCUPATION — Any use customarily conducted entirely within a dwelling and carried on by the inhabitants residing therein, providing that the use is clearly incidental and secondary to the use of the dwelling for dwelling purposes; the exterior appearance of the structure or premises is constructed and maintained as a residential dwelling; and no goods are publicly displayed on the premises other than a sign as provided herein; and may include professional practice (limited to a single practitioner)

87. Editor's Note: See 42 U.S.C. § 3601 et seq.

88. Editor's Note: See 21 U.S.C. § 802 et seq.

of medicine, dentistry, architecture, law and engineering, artists, beauticians, barbers and similar types of uses, excluding commercial stables, veterinarians, commercial kennels or motor vehicle or small engine repair shops and other uses not meeting the requirements of § 400-17C of this chapter.

HORSE — Any animal of the horse family or resembling a horse, including, but not limited to, horses, ponies, mules and donkeys.

HOSPITAL — An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities, but not including treatment centers/clinics or abused person shelters as defined by this chapter. Classified as a "health facility."

HOTEL — A facility offering temporary (generally for periods of two weeks or less) lodging accommodations to the general public, typically on the basis of daily or weekly rentals, and providing additional services such as restaurants, meeting rooms and recreational facilities.

IMPERVIOUS SURFACE — Area covered by roofs, concrete, asphalt or other man-made cover which has a coefficient of runoff of 0.7 or higher. The Borough Engineer shall decide any dispute over whether an area is impervious. Areas of land paved for the sole purpose of noncommercial tennis courts, trails or basketball courts or closely similar active outdoor recreation may be deleted from impervious surfaces for the purposes of determining permitted impervious coverage, unless those areas would also be used for nonrecreational uses (such as parking).

INDOOR ARCHERY RANGE — Any fully enclosed building used for shooting of arrows for recreational or training purposes. Any such commercial operation, any such area operated by any private, nonprofit entity, any community association, any such area operated by any sportsmen's, recreation or fraternal club or association with 25 or more members, and any such area which is used or is intended to be used for more than five hours in any one week shall be considered an indoor archery range for the purposes of this chapter. Classified as a "recreational facility, private."

INDOOR SHOOTING RANGE — Any fully enclosed building used for the discharge of any firearm for recreational or training purposes. Any such commercial operation, any such area operated by any private, nonprofit entity, any community association, any such area operated by any sportsmen's, recreation or fraternal club or association with 25 or more members, and any such area which is used or is intended to be used for more than five hours in any one week shall be considered an indoor shooting range for the purposes of this chapter. Classified as a "recreational facility, private."

JUNK —

A. Any scrap, waste, refuse, reclaimable material or debris, vehicles, appliances, equipment or machinery, or parts thereof, whether or not stored or used in conjunction with dismantling, processing, salvage, storage, baling, disposal or other use or disposition. Junk shall include, but shall not be limited to:

- (1) Scrap iron, tin, brass, copper, lead, zinc and all other metals and alloys; bones, rags, paper, used cloth, used rubber, used rope, and similar materials; old or used or parts of machinery, vehicles, tools, appliances, furniture, plumbing,

heating and other fixtures, and pipe and pipe fittings;

- (2) Used lumber, boxes, crates and pallets;
- (3) Used tires;
- (4) Other worn, deteriorated or obsolete manufactured goods which are unusable;
- (5) Mobile/manufactured homes that are not in habitable condition; and
- (6) Abandoned or junked vehicles.

B. Junk shall not include:

- (1) Any solid or liquid waste the disposal of which is regulated by the Pennsylvania Department of Environmental Protection;
- (2) Agricultural vehicles and implements such as tractors, mowers, etc., for use as parts for equipment and machinery used as part of an active, ongoing agricultural operation, provided such equipment is stored on the premises of the operation, can be legitimately used for parts, and is adequately screened; and
- (3) Construction and contractors' equipment for use as parts for equipment and machinery used as part of an active, ongoing contracting business legally operating in accord with this chapter, provided such equipment is stored on the premises of the operation, can be legitimately used for parts, and is adequately screened.

JUNKYARD —

A. An area of land, with or without buildings, used for the storage, outside a completely enclosed building, of junk as defined by this chapter, with or without the dismantling, processing, salvage, sale or other use or disposition of the same. The following shall also be considered junkyards:

- (1) The outside storage or deposit on a lot of one or more abandoned or junked vehicles; and
- (2) The outside storage or deposit on a lot of one or more mobile/manufactured homes that are not in habitable condition.

B. Vehicle sales lots managed by licensed vehicle dealers operated in accord with this chapter shall not be considered junkyards.

KENNEL — Any establishment housing dogs, cats or other household pets and where breeding, boarding or selling of animals is conducted as a business. This definition shall also include any veterinary clinic with outdoor animal runs and any premises where more than four dogs more than six weeks in age are kept.

LAND DEVELOPMENT —

A. Any of the following activities:

- (1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:

- (a) A group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
 - (b) The division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.
 - (2) A subdivision of land.
- B. The definition of "land development" shall not include:
- (1) The addition of an accessory building on a lot or lots subordinate to an existing principal building;
 - (2) The conversion of an existing single-family detached dwelling or a two-family dwelling into not more than three residential dwelling units, unless such units are intended to be a condominium.

LANDOWNER — The legal or beneficial owners of land, including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of a landowner, or other persons having a proprietary interest in land, shall be deemed to be landowners for the purpose of this chapter.

LIVESTOCK OPERATION — The raising or keeping of livestock for home use or any commercial purpose.⁸⁹

LIVESTOCK — Any animals raised or kept for home consumptive use or profit, including, but not limited to, cattle, bison, sheep, goats, llamas, swine, fowl, rabbits, insects and fur-bearing animals.

LOT — A designated parcel, tract or area of land, regardless of size, established by a plat or other legal means, and intended for transfer of ownership, use, lease or improvements or for development, regardless of how or if it is conveyed.

LOT AREA — The total number of square feet in the lot less any area included in any public road rights-of-way affecting the lot.

LOT COVERAGE — That portion or percentage of the lot area which is covered by buildings, roads, driveways, walkways, parking areas, or other impervious surfaces.

LOT DEPTH — The average horizontal distance between the front lot line and the rear lot line.

LOT, EXISTING OF RECORD — Any lot or parcel of property which was legally in existence and properly on file with the Lackawanna County Recorder of Deeds prior to the effective date of this chapter, as amended.

LOT, THROUGH — A lot that abuts two approximately parallel streets.

LOT LINE, FRONT — The line separating the lot from a street.

LOT LINE HOUSE — A single-family detached dwelling on an individual lot, with the

89. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

building set on or close to one side property line, so that the lot essentially has only one side yard. This side yard and the rear yard constitute the primary outdoor living areas for the dwelling. Typically, no windows are placed in the building wall that is on the lot line. If the building is set on the lot line, a five-foot easement is provided on the adjacent property along the lot line for necessary access and maintenance of the building wall.

LOT LINE, REAR — The lot line most distant from and most parallel to the front lot line.

LOT LINE, SIDE — Any lot line other than a front or rear lot line.

LOT WIDTH — The average horizontal distance between the side lot lines, measured parallel to the front lot line.

MAILED NOTICE — Notice given by a municipality by first-class mail of the time and place of a public hearing and the particular nature of the matter to be considered at the hearing, pursuant to 53 P.S. § 10109.⁹⁰

MANUFACTURED HOME — A transportable single-family dwelling intended for permanent occupancy, office or place of assembly, contained in one or more sections, which arrives at a site complete and ready for installation except for minor and incidental unpacking and assembly operations and constructed so that it may be used with or without a permanent foundation, including, but not limited to, mobile homes and modular homes.

MANUFACTURING AND INDUSTRY — Establishments engaged in the basic mechanical, chemical or other transformation of extracted or raw materials or substances into new products or materials, including, but not limited to, the assembly of component parts, the manufacturing or transformation of products for use by other manufactures; the blending of materials such as lubricating oils, plastics, resins or liquors; other basic industrial processes, and any facility involving processes resulting in the storage of hazardous materials or the generation of hazardous waste products, or other environmentally regulated processes.

MANUFACTURING, LIGHT — Facilities involving generally unobtrusive processes not resulting in the storage of hazardous materials or the generation of hazardous waste products, or other environmentally regulated processes. Uses producing products predominately from previously prepared materials, finished products and parts, including, but not limited to, research, engineering or testing laboratories, assembly from components, fabrication of products, textile and clothing manufacturing, warehousing, distribution centers, furniture or other wood products production and the like, but excluding basic industrial processing.

MASSAGE — The performance of manipulative exercises using the hands and/or a mechanical or bathing device on a person's skin other than the face or neck by another person(s) for a certain monetary compensation, and which does not involve persons who are related to each other by blood, adoption, marriage or official guardianship.⁹¹

MASSAGE FACILITY, THERAPEUTIC — A service establishment that meets all of the following criteria:

A. Massages are conducted (see definition); and

90. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

91. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- B. The person conducting the massage is licensed by the state as a health care professional or a therapeutic massage therapist, or is certified by a recognized therapeutic massage organization that requires substantial professional training.

MASSAGE PARLOR —

- A. An establishment that meets all of the following criteria:
- (1) "Massages" are conducted (see definition);
 - (2) The person conducting the massage is not licensed as a health care professional or a licensed massage therapist by the state;
 - (3) The massages are not conducted within a licensed hospital, nursing home, personal care center or office of a medical doctor or chiropractor;
 - (4) The massages are conducted within private or semiprivate rooms; and
 - (5) The use is not clearly a customary and incidental accessory use to a permitted exercise club or to a high school or college athletic program.
- B. A massage parlor shall be considered an adult business for the purposes of this chapter.

MEDICAL CLINIC — An establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists or social workers and where patients are not lodged overnight, but not including treatment centers/clinics or abused person shelters as defined by this chapter. Classified as a "health facility."

MINERALS — Any aggregate or mass of mineral matter, whether or not coherent. The term includes, but is not limited to, limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite and clay, anthracite and bituminous coal, coal refuse, peat and crude oil and natural gas.

MOBILE HOME — A transportable, single-family dwelling intended for permanent occupancy, office or place of assembly, contained in one unit or in two units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation.

MOBILE HOME LOT — A parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenances necessary for the erection thereon of a single mobile home, the said mobile home as defined by this chapter.

MOBILE HOME PARK — A parcel or contiguous parcels of land which has been so designated and improved that it contains two or more mobile home lots for the placement thereon of mobile homes; the said mobile homes as defined by this chapter.

MODEL HOME — A residential structure associated with a principal permitted commercial use and not intended for permanent occupancy and used solely for demonstration purposes to inform potential purchasers of the types of homes available from the seller.

MOTEL — A facility offering temporary (generally for periods of two weeks or less) lodging accommodations to the general public, typically on the basis of daily or weekly

rentals, with at least 25% of the rooms having direct access to the outside.

MULTIFAMILY PROJECT — Any development of a single parcel of property that includes one or more buildings containing three or more dwelling units, which units may or may not be conveyed with a specified lot after development. Any residential development which proposes the construction of two or more two-family dwellings on a single parcel of property shall also be considered a multifamily project. A two-family dwelling in a multifamily project shall be considered a townhouse for the purposes of regulation by this chapter.

MULTIPLE-OCCUPANT COMMERCIAL BUILDING — A building containing two or more independent, nonresidential uses; such uses also being permitted in the district where the multiple-occupant building is proposed.

NATURAL RESOURCE USE — The mining, removal or recovery by any means whatsoever (including, but not limited to, open excavations and quarries and subsurface mining) of soil, rock, minerals, mineral substances or organic substances other than vegetation, from water, land, on or beneath the surface thereof; said substances including but not limited to coal, limestone, shale, dolomite, sandstone, sand, clay, gravel, rock, stone, earth, ore, peat, soil, or other mineral.

NATURAL RESOURCES PROCESSING — The refinement of minerals to specifications for sale, including, but not limited to, the crushing, screening, washing or grading of minerals; and the use of minerals in any manufacturing process, such as, but not limited to, concrete or cement batching plants, asphalt plants and manufacture of concrete and clay products.

NO-IMPACT HOME-BASED BUSINESS — A business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves no customer, client or patient traffic, whether vehicular or pedestrian, pickup, delivery or removal functions to or from the premises in excess of those normally associated with residential use.⁹²

A. The business or commercial activity must satisfy the following requirements:

- (1) The business activity shall be compatible with the residential use of the property and surrounding residential uses.
- (2) The business shall employ no employees other than family members residing in the dwelling.
- (3) There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.
- (4) There shall be no outside appearance of a business use, including, but not limited to, parking, signs or lights.
- (5) The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.

92. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (6) The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.
- (7) The business activity shall be conducted only within the dwelling and may not occupy more than 25% of the habitable floor area.
- (8) The business may not involve any illegal activity.

B. If the business meets all such requirements, it shall be considered a lawful accessory use to a dwelling.

NONCONFORMING LOT — See also § 400-48.⁹³

NONCONFORMING STRUCTURE — See § 400-48.⁹⁴

NONCONFORMING USE — See § 400-48.⁹⁵

NUDE MODEL STUDIO — Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. A nude model studio shall be considered an adult business for the purposes of this chapter. [See § 400-32D(9).]

NUDITY or STATE OF NUDITY — The appearance of a human bare buttock, anus, male genitals, female genitals, or full female breast.

NURSERY, COMMERCIAL — A commercial operation where trees and shrubs are grown for transplanting, for use as stocks for budding and grafting, or for sale.

NURSING HOME — A facility licensed by the commonwealth for the housing and intermediate or fully-skilled nursing care of three or more persons needing such care because of old age or a physical illness or disability or a developmental disability, but not including treatment centers/clinics or abused person shelters as defined by this chapter. Classified as a "health facility."

OBSCENE MATERIALS — Any literature, book, magazine, pamphlet, newspaper, paper, comic book, drawing, photograph, figure, image, motion picture, sound recording, article, instrument or any other written or recorded matter which depicts or describes any specified anatomical areas and/or specified sexual activities.

OFFICE BUILDING — A building used primarily for conducting the affairs of a business, profession, service, industry or government, or like activity.

OPEN LAND or OPEN SPACE — That part of a particular development tract set aside for the protection of sensitive natural features, farmland, scenic views and other primary and secondary conservation areas identified by this chapter. Open land may be accessible to the residents of the development and/or the Borough, or it may contain areas of farmland, forest land or estate lots which are not accessible to project residents or the public.

PARCEL — See definition of "lot."

93. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

94. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

95. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

PARKING AREA, PRIVATE — An open area for the same uses as a private garage.

PARKING AREA, PUBLIC — An open area, other than a street or other public way, used for the parking of automobiles and available to the public, whether for a fee, free or as an accommodation for clients or customers.

PATIO — An open recreational area or structure, constructed no higher than six inches from the ground level and resting directly on the ground. It may be attached to or detached from the principal building and may be constructed using wood, masonry, pavement, stone or other material suitable for that purpose.

PERMANENT FOUNDATION — A cement, concrete, treated wood or cinder-block-walled foundation erected on a poured concrete, frost-free footer.

PERMIT — A document issued by the proper Borough authority authorizing the applicant to undertake certain activities.

- A. **ZONING PERMIT** — A permit that may be issued indicating that a proposed use, building or structure is, to the best knowledge of the Borough Staff, in accordance with this chapter, and which authorizes an applicant to proceed with said use, building or structure, within all other applicable laws and regulations.
- B. **USE PERMIT** — A permit that may be required by the Borough that is issued upon completion of the construction of a structure, or change in use of a structure or parcel of land, or re-occupancy of a structure or land, indicating that the premises, to the best knowledge of the Building and Zoning Officers, complies with the provisions of Borough ordinances. This shall have the same meaning as a "certificate of use and occupancy."
- C. **BUILDING PERMIT** — A permit indicating that a proposed construction, alteration or reconstruction of a structure is, to the best knowledge of the Borough Staff, in accordance with the provisions of the building code(s) adopted by the Borough.

PERSONAL CARE HOME OR CENTER — A residential use providing residential and support services primarily to persons who are over age 60, physically handicapped and/or the developmentally disabled, and that is licensed as a personal care center by the commonwealth, but not including treatment centers/clinics or abused person shelters as defined by this chapter. Classified as a "health facility."

PLACE OF WORSHIP — Buildings, synagogues, churches, religious retreats, monasteries, seminaries and shrines used primarily for religious and/or spiritual worship and that are operated by a tax-exempt organization for nonprofit and noncommercial purposes. A place of worship may include two dwelling units as an accessory use to house full-time religious leaders and their families. If a religious use is primarily residential in nature, it shall be regulated as the appropriate dwelling type; for example, a use involving multifamily dwellings shall be regulated as such in terms of district location, density and other design standards.

PORCH — An attached roofed patio or deck. With the exception of the wall adjoining the principal structure, all walls must be open or screened with a wall no higher than four feet above the floor level. A porch is considered an attached accessory structure and must meet those setback requirements for principal structures.

PRINCIPAL BUILDING — The building in which the principal use of a lot is

conducted. Any building that is physically attached to a principal building shall be considered part of that principal building.

PRINCIPAL USE — A dominant use(s) or main use on a lot, as opposed to an accessory use.

PROFESSIONAL OFFICE — The office of a member of a recognized profession maintained for the conduct of that profession, including the following professions: accountant, architect, author, dentist, engineer, insurance agent, landscape architect, lawyer, optometrist, planner, physician, realtor, and other such occupations as may be designated by the Borough as part of the conditional use process by virtue of the need for specialized training and experience as a condition of the practice of the profession and that such profession will in no way adversely affect the safety or character of surrounding properties to a greater extent than the specific professions listed herein. The issuance of a federal, state or local license for regulation of any gainful occupation need not be deemed indicative of professional standing. Classified as an "office building."

PUBLIC BUILDINGS AND USES — Any structure, building or use owned and operated by a government body or agency including such things as public schools, parks, civic centers, but excluding solid waste disposal facilities, institutional uses, nursing homes, hospitals and other use specifically defined by this chapter.

PUBLIC NOTICE — Notice published once each week for two consecutive weeks in a newspaper of general circulation in the Borough. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing.

PUBLIC UTILITY TRANSMISSION TOWER — A structure, owned and operated by a public utility electric company regulated by the Pennsylvania Public Utility Commission, designed and used to support overhead electricity transmission lines.

RACETRACK — A road course, either oval, circuitous or straight, where motor vehicles, including but not limited to automobiles, trucks, go-carts, motorcycles, motor scooters, dune buggies and the like, are driven for pleasure, testing or competition; or any course where animals are raced for competition.

RECREATIONAL FACILITIES, PRIVATE — Outdoor or indoor areas or structures, operated by private nonprofit or private commercial entities, open to the public, which may contain entertainment and amusement devices or attractions, including but not limited to amusement parks, picnic groves, animal farms, zoological parks, tennis and racquetball courts, ski areas, golf courses, country clubs, miniature golf courses, golf driving ranges, animal racing tracks, and the like, but excluding racetracks, theaters, public parks and playgrounds.

RECREATIONAL FACILITIES, PUBLIC — Parks, swimming pools, playgrounds, tennis courts, and other recreational facilities, including associated buildings, owned and operated by the Borough, county, school district, state or federal government.

RECREATIONAL VEHICLE PARK — See "campground or RV park."

RECREATION AREA — A private or public space associated with a residential development, including accessory structures such as fences, backstops and bleachers, used for play and/or recreation by individuals.

RECREATION AREA, ACTIVE — A private or public space associated with a residential development, including accessory structures such as fences, backstops and bleachers and other equipment, used for play and/or recreation by individuals, and including, but not limited to, golf courses, basketball, volleyball and tennis courts, baseball, football and soccer fields, and playgrounds.

RECREATION AREA, PASSIVE — A private or public space associated with a residential development, not including any accessory structures used for inactive recreation by individuals, and including, but not limited to, trails, picnic areas, community gardens, and lawns.

RECREATION VEHICLE — A vehicle with or without motor power which may be towed on the public highways by a passenger automobile or truck without a special hauling permit or which may be driven under its own power. This definition includes, but is not limited to, campers, travel trailers, buses, camping trailers, pickup trucks with slide-in campers, recreational vehicle homes and motor homes.

RECYCLABLES — Materials intended for reuse, remanufacture or reconstitution and including for the purposes of this chapter only the following materials: aluminum beverage containers; glass beverage and food containers; plastic beverage, food and household product containers but not including plastic film or bags; bimetal food containers; newsprint, magazines and office paper; and corrugated paper. Recyclables shall not include tires, large appliances such as stoves, refrigerators, washers and dryers, other scrap metal, used motor oil or any other material defined as "junk" or "solid waste" by this chapter.⁹⁶

RECYCLING FACILITY — A center for the collection and/or processing of recyclable materials. A recycling facility does not include storage containers or processing activity located on the premises of a residential, commercial or manufacturing use and used solely for the recycling of material generated by that residential property, business or manufacturer. Any facility accepting or processing waste or other discarded materials which are not recyclables as defined or authorized under this chapter shall be considered a junkyard or solid waste facility as regulated by this chapter. Recycling facilities shall be consider light manufacturing for the purposes of regulation by this chapter.

RELATED OR RELATIVE — Persons who are related by blood, marriage, adoption or formal foster relationship to result in one of the following relationships: brother, sister, parent, child, grandparent, great-grandparent, grandchild, great-grandchild, uncle, aunt, nephew, sister-in-law, brother-in-law, father-in-law, mother-in-law or first cousin. It shall not include relationships such as second, third or fourth cousins.

RESTAURANT, DRIVE-IN — An establishment that sells ready-to-consume food or drink where at least a portion of patrons are served while the patrons remain in their motor vehicles.

RESTAURANT, STANDARD — An establishment that sells ready-to-consume food or drink and that routinely involves the consumption of at least a portion of such food on the premises: A standard restaurant may include the accessory sale of alcoholic beverages. However, if such sale is a primary or substantial portion of the total trade, the requirements of a tavern must be met.

RETAIL BUSINESS — An establishment engaged in selling goods or merchandise

96. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

to the general public for personal or household consumption and rendering services incidental to the sale of such goods, and which is not otherwise listed as a use in the Schedule of Uses.

RIGHT-OF-WAY — Land reserved for use as a street, drainage facility or other public or community use. A right-of-way shall not be considered as land area when computing lot size.

SATELLITE DISH ANTENNA or SATELLITE ANTENNA — A ground-based reflector, usually parabolic in shape, that receives electronic signals from a satellite. This term shall also include any pedestal or attached structure.

SAWMILL — Any facility, including structures, machinery and associated equipment, where timber is sawed into boards. Any facility which includes the drying of boards in kilns or the fabrication of any product shall be considered "agricultural products processing."

SCHOOL, PUBLIC OR PRIVATE; PRIMARY OR SECONDARY SCHOOL — An educational institution primarily for persons between the ages of five and 19 that primarily provides state-required or largely state-funded educational programs. This term shall not include trade schools (such as privately operated schools of trade, vocation or business).

SCREENED — Not visible from any adjoining or neighboring property, any public or private road right-of-way, or any other premises which is accomplished by fencing, topography, berms, natural and planted vegetation or other means approved by the Borough.

SELF-STORAGE FACILITY — A building or buildings containing separated spaces to be leased or rented to individuals and/or businesses for the storage of personal belongings, goods or supplies.

SEMI-PUBLIC BUILDING OR USE — Buildings or uses operated by nonprofit, community-based organizations for the general use of Borough residents, including fire houses, ambulance buildings, private schools, libraries and the like, but excluding institutional uses such as nursing homes, hospitals, sanitariums and clinics or other use specifically defined and listed in the Schedule of Uses. It shall also include essential services and public utilities that require enclosure within any structure or building.

SERVICE ESTABLISHMENT — Establishments engaged in providing services involving the care or needs of a person or his or her apparel such as cleaning and garment services, beauty and barber shops, shoe repair, dry cleaning and laundries, photographic studios, etc., and which is not otherwise listed as a use in the Schedule of Uses.

SETBACK — An open unoccupied space which shall extend the full depth or width of a lot and which shall not be occupied by any portion of any building. Front setbacks shall be measured from the edge of the highway right-of-way and other setbacks from property lines. In the case of flag lots, the front setback shall be measured from the lot line closest to the public road right-of-way from which access is gained.

SEWAGE DISPOSAL SYSTEM — A system to collect, treat and dispose of sewage. No such system shall be permitted that does not comply with local, state and federal requirements.

A. CENTRAL OR COMMUNITY SEWAGE DISPOSAL — A sanitary sewage

collection and treatment system meeting the requirements of the Pennsylvania Department of Environmental Protection in which sewage is carried from individual lots or dwelling units by a system of pipes to a central treatment and disposal facility or system, which may be publicly or privately owned and operated, including sewage treatment plants, land-application systems, and community sewage disposal systems. A system designed to serve a two-family dwelling or two dwelling units located on the same property or adjacent properties shall not be considered as central sewerage for unit density determination, and in such a case all development standards, including but not limited to unit densities, will apply the same for each dwelling or unit as any single-family unit.

- B. PUBLIC SEWAGE DISPOSAL — A central sewage disposal system owned and operated by a government or governmental agency.
- C. ON-LOT OR INDIVIDUAL SEWAGE DISPOSAL — Any sewage disposal system (whether subsurface or above ground) used to treat and dispose of domestic sewage into the soil on an individual lot in accord with Pennsylvania Department of Environmental Protection rules and regulations.

SEXUAL ENCOUNTER CENTER —

- A. A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:
 - (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex;
 - (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or seminude.
- B. A sexual encounter center shall be considered an adult business for the purpose of this chapter.

SHED — An accessory structure, either attached or detached, used for the storage of tools, minor equipment, and materials.

SHOPPING CENTER or MALL — A group of commercial establishments planned, constructed and managed as a total entity with customer and employee parking provided on site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements.

SIGNS — See Article XI.

SLAUGHTERHOUSE — A use involving the killing of animals for the production of food or some other associated commercial product which is sold wholesale. A commercial stockyard or similar facility that primarily involves the bulk storage or transferring of animals on the way to slaughter shall also be considered a slaughterhouse. This shall not include a custom butcher shop that involves the killing of animals for retail sales directly to customers at the butcher shop.

SOLID WASTE FACILITY, COMMERCIAL — Any facility or operation of a private individual or firm pursuant to the laws of the Commonwealth of Pennsylvania governing the management and disposal of solid waste, including, but not limited to, liquid, solid, toxic, hazardous and medical waste, and including but not limited to transfer stations,

solid waste landfills, incinerators, medical waste disposal facilities, hazardous waste disposal facilities and radioactive waste disposal facilities.

SOLID WASTE FACILITY, PUBLIC — Any facility or operation of a public entity pursuant to the laws of the Commonwealth of Pennsylvania governing the management and disposal of solid waste, including, but not limited to, liquid, solid, toxic, hazardous and medical waste, and including but not limited to transfer stations, solid waste landfills, incinerators, medical waste disposal facilities, hazardous waste disposal facilities and radioactive waste disposal facilities.

SOLID WASTE or WASTE — Any garbage, refuse, industrial, lunchroom or office waste or other material, including solid, liquid, semisolid or contained gaseous material, resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities. The term shall also include any garbage, refuse, other discarded material or other waste, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, mining, agricultural operations' local facilities or any other by-product or effluent from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility, or any other material defined by the PA DEP as solid, liquid, municipal, medical, industrial, toxic or hazardous waste.

SOLID WASTE STAGING AREA — Any parcel of property used for the transfer of solid waste from one vehicle to another vehicle, at a location other than the generation site, for transport to a solid waste facility; or which is used for the parking or storage of vehicles and/or containers used to transport solid waste, and which is not regulated by the PA DEP as a solid waste transfer facility.

SPECIAL EXCEPTION — A use allowed, with permission granted by the Zoning Hearing Board, to occupy and use land and/or a building for specific purposes in accord with this chapter.

SPECIFIED ANATOMICAL AREAS — Any of the following:

- A. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae.
- B. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES — Any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts.
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy.
- C. Masturbation, actual or simulated.
- D. Excretory functions as part of or in connection with any of the activities set forth in Subsections A, B and C of this definition.

STABLE, COMMERCIAL — A structure or land where horses are kept for remuneration, hire, sale, boarding, riding or show, and which includes the commercial hire of horses to the general public for riding or other purposes. (See § 400-36C.)

STABLE, PRIVATE — An accessory structure or use of land where horses are kept for the sole use of the residents of the principal structure, and which includes no remuneration, hire, boarding or other commercial use. (See § 400-36B.)

STORAGE YARD FOR FOREST PRODUCTS AND MINERALS — An area, not on the same parcel where the products are initially harvested or gathered, to which trees, forest products, flag stone, landscaping stone, or wall stone are hauled and stored, and which does not involve any of the following: the operation of a sawmill, the operation of any other wood manufacturing business, or the operation of any natural resources processing.

STREET — A public or private thoroughfare which affords the principal means of access to abutting property, including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except an alley. "Public rights-of-way" shall be those open to the general use of the public, not necessarily publicly dedicated.

STRUCTURAL ALTERATION — Any change in the structural members of a building, such as walls, columns, beams or girders, or any addition to any structure.

STRUCTURE — A combination of materials to form a construction for use, occupancy or ornamentation, whether installed on, above or below the surface of land or water.

STRUCTURE, PERMANENT — Anything constructed, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground.

STRUCTURE, PORTABLE — Anything constructed that is not permanently affixed to the ground but is designed to be moved from place to place.

STRUCTURE, TEMPORARY — Any structure that is erected for a limited period of time specified in the zoning permit, such time normally not exceeding 30 days.

STUDIO — An establishment where an art is taught, studied or produced, or where movie, radio, television or music recording is produced.

SUBDIVISION — The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land, including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development; provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than 10 acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

TAVERN — A place where alcoholic beverages are served as a primary or substantial portion of the total trade and where the sale of food may also occur.

THEATER — A building or part of a building devoted to the showing of motion pictures or theatrical or performing arts productions as a principal use, but not including an outdoor drive-in theater or adult movie theater.

TRADE SCHOOL — A facility that is primarily intended for education of a work-related skill or craft or a hobby and that does not primarily provide state-required education to persons under age 16. This shall include a dancing school, martial arts school or ceramics school. Classified as a "school."

TREATMENT CENTER/CLINIC — A use (other than a detention facility or a

permitted accessory use in a hospital) providing housing facilities for persons who need specialized housing, treatment and/or counseling for stays in most cases of less than one year and who need such facilities because of: (See also "health facility.")

- A. Chronic abuse of or addiction to alcohol and/or a controlled substance; or
- B. A type of mental illness or other behavior that could cause a person to be a threat to the physical safety of others.

TRUCK TERMINAL — A terminating point where goods are transferred from a truck to a storage area or to other trucks or picked up by other forms of transportation.

TRUCK WASH — Any building or premises or portion thereof used for washing trucks with a gross vehicle weight exceeding 5,000 pounds.

USE — The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

VARIANCE — Relief granted pursuant to the provisions of this chapter and Articles VI and IX of the Pennsylvania Municipalities Planning Code.⁹⁷

VEHICLE — Any device in, upon or by which any person or property is or may be transported or drawn upon a public highway or upon any land, including, but not limited to, automobiles, trucks, vans, buses, utility trailers, tractors, truck tractors, recreational vehicles, motor homes, travel trailers, motorcycles, machinery, trailers, farm machinery and implements, and other wheeled equipment, boats and aircraft.

VEHICLE AND EQUIPMENT SALES OPERATION — The use of any building, land area or other premises for the display and sale of new and used automobiles of operable condition; panel trucks or vans; mobile homes or trailers; recreation vehicles; or farm or construction equipment, including any warranty repair work and other repair service as an accessory use. No business or facility which generates less than 50% of its gross sales from the actual sale of new or used vehicles or equipment of the type herein described (excluding parts and repairs) shall be considered a vehicle and equipment sales operation.

VEHICLE OR EQUIPMENT REPAIR OPERATION — An establishment engaged in the service and/or repair of any motor vehicle as its principal use, including but not limited to auto body shops, repair garages, truck repair garages and agriculture equipment repair.

VETERINARY CLINIC — A place where animals or pets are given medical or surgical treatment and the keeping of animals is limited to short-term care incidental to the clinic use, and no outdoor kennels or pens are on the premises.

WALL — See "fence."

WAREHOUSE — Terminal facilities operated for a specific commercial establishment or group of establishments in a particular industrial or economic field and used for the storage of goods and materials.

WATER EXTRACTION AND BOTTLING — Any use which involves the pumping or removal of water from groundwater sources, with or without bottling, for retail or

97. Editor's Note: See 53 P.S. § 10601 et seq., and 53 P.S. § 10901 et seq.

wholesale sale. Classified as "light manufacturing."

WATER SYSTEM OR SUPPLY — A system designed to transmit water from a source to users in compliance with the requirements of the appropriate state agencies and the Borough.

- A. **COMMUNITY OR PUBLIC WATER** — A public or private utility system designed to supply and transmit drinking water from a common off-lot source to two or more dwelling units or uses.
- B. **ON-LOT OR INDIVIDUAL WATER** — Service by a water system that does not meet the definition of a "community or public water" above. In most cases, this would involve an individual well serving an individual lot, but may also include a common well or another duly approved system.

WHOLESALE BUSINESS — Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional or professional business users; or to other wholesalers; or acting as agents or brokers and buying merchandise for or selling merchandise to such individuals or companies.

WIND FARM — A facility where one or more windmills are located and are used for the generation of electricity which is used on-site for commercial purposes or which is sold on the open market. A windmill accessory to a principal structure which is sized and intended to be used to generate electricity primarily for the principal structure to which it is accessory shall not be considered a wind farm.

YARD — An open unoccupied space which shall extend the full depth or width of a lot and which shall not be occupied by any building. Front yards shall be measured from the edge of the road right-of-way and other yards from property lines.

YARD SALE — Any offering for sale to the public of used and accumulated normal household and other personal items conducted on a temporary, intermittent basis (not to exceed five sales per year for not more than three consecutive days each) as an accessory use to a residential dwelling. The buying and selling of new or used items or surplus material shall be considered a commercial operation and shall be prohibited, except as otherwise permitted and regulated by this chapter.

ZONING MAP — The Official Zoning Map of Dalton Borough.⁹⁸

ZONING OFFICER — The administrative officer charged with the duty of enforcing the provision of this chapter.

98. Editor's Note: The Zoning Map is on file in the Borough offices.

ARTICLE IV District Regulations

§ 400-10. Designation of districts.

- A. Designation. For the purposes of this chapter, Dalton Borough is hereby divided into the following zoning districts:
- | | |
|-----|---------------------------------|
| R-1 | One-Family Residential District |
| R-R | Rural Residential District |
| R-2 | Medium Density Residential |
| C-1 | Village Commercial |
| C-2 | Highway Commercial |
| M-1 | Manufacturing |
- B. Intent. The intent of each district and the uses permitted in each district are set forth on the District Use Schedules contained in § 400-13A of this chapter or in the specific sections establishing any overlay district. Bulk and density standards for each district are set forth on the Schedule of Development Standards contained in § 400-13C of this chapter.
- C. Floodplain regulations. The Floodplain Overlay District is hereby created to be coterminous with the flood hazard areas established by the Federal Emergency Management Agency for the Borough as shown on the most recent Federal Flood Insurance Rate Maps. In addition to all the applicable standards of this chapter any floodplain regulations duly adopted by the Borough Council shall apply in the Floodplain Overlay District.⁹⁹
- D. Conservation design overlay district. The Conservation Design Overlay District is hereby created to promote the conservation of open lands in association with residential development. The district shall apply to all R-1, R-R and R-2 Districts in accord with § 400-19 of this chapter.

§ 400-11. Official Zoning Map.

The location and boundaries of said districts are hereby established as shown on the Official Zoning Map of Dalton Borough, which is hereby adopted by reference and declared to be a part of this chapter, together with all amendments thereto.¹⁰⁰

§ 400-12. District boundaries.

- A. Establishment. District boundary lines are intended to follow or be parallel to the center line of streets, streams and lot or property lines as they exist on a recorded deed or plan of record in the Lackawanna County Recorder of Deeds' office and on the Lackawanna County Tax Maps at the time of the enactment of this chapter, unless such district boundary lines are fixed by dimensions or otherwise are shown on the Official Zoning Map.

⁹⁹. Editor's Note: See Ch. 197, Floodplain Management.

¹⁰⁰. Editor's Note: The Zoning Map is on file in the Borough offices.

- B. Interpretation. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines, or highway right-of-way lines, such center lines, street lines, or highway right-of-way lines shall be construed to be such boundaries. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries. Where district boundaries are so indicated that they are approximately parallel to the center lines or street lines of streets or the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Official Zoning Map. If no distance is given, such dimensions shall be determined by the use of the scale shown on the Official Zoning Map. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located in the middle of the main tracks of said railroad line.
- C. Uncertainty. In the event of uncertainty as to the true location of a district boundary line in a particular instance, the Zoning Officer is authorized to determine the correct district boundary in accord with the guidelines of this chapter. Any decision of the Zoning Officer may be appealed to the Zoning Hearing Board.

§ 400-13. District regulations.

District regulations are of two types, use regulations and development standards, which shall apply to any proposed new use, expansion of an existing use or change of use of any land or structure.

- A. Use regulations. District use regulations are provided in the following Schedule of Uses.
- (1) Permits for principal permitted uses and accessory uses shall be issued by the Zoning Officer, provided such uses comply with the standards in this chapter.
 - (2) Conditional uses and special exception uses shall be subject to the additional review procedures and criteria as specified in this chapter.
 - (3) No land and no structure in a particular zoning district shall be used for any use which is not specifically listed on the Schedule of Uses for that particular district and only in accord with all other requirements of this chapter. Larger lot sizes, greater setbacks, buffers and other more restrictive standards may be required by other provisions of this chapter. In cases where this chapter provides different requirements for the same use, the most restrictive requirement shall apply.

Schedule of Uses

R-1 — One-Family Residential District

INTENT: To provide areas adequate to accommodate the Borough's single-family dwelling needs and limiting unnecessary intrusions of incompatible uses which might pose a threat to the health, safety or welfare of families and individuals occupying said housing, and to allow certain public and semipublic uses compatible with residential neighborhoods.

Principal Permitted Uses (Zoning Officer)	Conditional Uses (Planning Commission/ Council)	Accessory Uses (Zoning Officer)
Borough facilities and uses	Day care, adult and child	Accessory uses customary to approved uses
Forestry enterprises	Home occupations unless classified as an accessory use by § 400-17C(13)	Communications antenna attached to an existing structure in accord with § 400-37
Group homes (see § 400-23)	Golf courses as part of a residential development, excluding miniature golf and golf driving ranges	Essential services
Single-family detached dwellings		Home gardens, home greenhouses and home nurseries
		Private garages, carports, sheds
	Special Exceptions (Planning Commission/ ZHB)	Private stables
	Public and semipublic buildings and uses	Private swimming pools
	Schools, public and private, primary and secondary	Required parking areas
		Signs accessory to approved uses
		Satellite dish antennas
		Yard sales

NOTES:

- Uses not specifically listed by this schedule shall not be permitted in the R-1 District.
- Larger lot size may be required by other sections of this chapter.

Schedule of Uses

R-R — Rural Residential District

INTENT: To permit all types of agriculture, single-family-detached dwellings and certain commercial uses not appropriate for other districts.

Principal Permitted Uses (Zoning Officer)	Conditional Uses (Planning Commission/ Council)	Special Exceptions (Planning Commission/ ZHB)
Borough facilities and uses	Airports	Public and semipublic buildings and uses
Crop production	Animal hospitals	Schools, public and private, primary and secondary
Day care, adult and child, not exceeding 6 individuals	Archery ranges, outdoor	
	Bed-and-breakfast establishments	
Forestry enterprises		
Group homes (see § 400-23)	Campgrounds and recreational vehicle parks	Accessory Uses (Zoning Officer)
Livestock operations	Cemeteries and mausoleums	Accessory uses customary to approved uses
Retail sales of agricultural commodities in accord with 3 P.S. § 951 et seq., the PA Right to Farm Law	Colleges and universities	Communications antenna attached to an existing structure in accord with § 400-37
	Communications towers and antennas	
Single-family detached dwellings	Commercial greenhouses and nurseries	
	Country clubs	Essential services
	Day care, adult and child	Home gardens, home greenhouses and home nurseries
	Golf courses, excluding miniature golf and golf driving ranges	Private garages, carports, sheds
	Home occupations, unless classified as an accessory use by § 400-17C(13)	Private stables
		Private swimming pools
		Required parking areas

Schedule of Uses

R-R — Rural Residential District

INTENT: To permit all types of agriculture, single-family-detached dwellings and certain commercial uses not appropriate for other districts.

Principal Permitted Uses (Zoning Officer)	Conditional Uses (Planning Commission/ Council)	Special Exceptions (Planning Commission/ ZHB)
	Kennels	Signs accessory to approved uses
	Mineral extraction	Satellite dish antennas
	Mineral extraction, minor	Yard sales
	Mobile home parks	
	Places of worship	
	Racetracks	
	Sawmills	
	Shooting ranges, outdoor	
	Stables, commercial	
	Storage yard for forest products and stone	
	Veterinary clinics	
	Wind farms	
	Zoos, menageries, wild and exotic animals	

NOTES:

- Uses not specifically listed by this schedule shall not be permitted in the R-R District.
- Larger lot sizes may be required for certain uses by other sections of this chapter.

Schedule of Uses

R-2 — Medium-Density Residential District

INTENT: To provide areas adequate to accommodate the Borough's single-family and two-family dwelling needs and limiting unnecessary intrusions of incompatible uses which might pose a threat to the health, safety or welfare of families and individuals occupying said housing and to allow certain commercial, public and semipublic uses compatible with residential neighborhoods.

Principal Permitted Uses (Zoning Officer)	Conditional Uses (Planning Commission/Council)	Accessory Uses (Zoning Officer)
Borough facilities and uses	Bed-and-breakfast establishments	Accessory uses customary to approved uses
Forestry enterprises	Day care, adult and child	Communications antenna attached to an existing structure in accord with § 400-37
Group homes (see § 400-23)	Cemeteries and mausoleums	
Single-family detached dwellings	Country clubs	
Two-family dwellings	Golf courses, excluding miniature golf and golf driving ranges	Essential services
	Home occupations, unless classified as an accessory use by § 400-17C(13)	Home gardens, home greenhouses and home nurseries
		Private garages, carports, sheds
		Private swimming pools
		Required parking areas
	Medical clinics	Signs accessory to approved uses
	Multifamily dwellings and projects	Satellite dish antennas
	Places of worship	Yard sales

Schedule of Uses

R-2 — Medium-Density Residential District

INTENT: To provide areas adequate to accommodate the Borough's single-family and two-family dwelling needs and limiting unnecessary intrusions of incompatible uses which might pose a threat to the health, safety or welfare of families and individuals occupying said housing and to allow certain commercial, public and semipublic uses compatible with residential neighborhoods.

Principal Permitted Uses (Zoning Officer)	Conditional Uses (Planning Commission/Council) Special Exceptions (Planning Commission/ZHB) Public and semipublic buildings and uses Schools, public and private, primary and secondary	Accessory Uses (Zoning Officer)
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NOTES:

- Uses not specifically listed by this schedule shall not be permitted in the R-2 District.
- Larger lot size may be required by other sections of this chapter.

Schedule of Uses

C-1 — Village Commercial District

INTENT: To recognize the existing extent and character of uses in the central business district and to provide areas for the location of residential dwellings and businesses and commercial enterprises compatible to the village setting.

Principal Permitted Uses	Conditional Uses	Special Exceptions
(Zoning Officer)	(Planning Commission/Council)	(Planning Commission/ZHB)
Bed-and-breakfast establishments	Abused person shelters	Public and semipublic buildings and uses
Boarding and lodging houses	Banks	Schools, public and private, primary and secondary
Borough facilities and uses	Colleges and universities	
Day care, adult and child	Funeral parlors	
Group homes	Health facilities	
Medical clinics	Home occupations, unless classified as an accessory use by § 400-17C(13)	Accessory Uses
Office buildings	Mixed commercial/residential use (see § 400-16)	(Zoning Officer)
Professional offices		Accessory uses customary to approved uses
Recycling units, mobile		Essential services
Restaurants, traditional		Home gardens, home greenhouses and home nurseries
Retail businesses		
Service establishments	Multifamily dwellings	Private garages, carports, sheds
Single-family detached dwellings	Private schools	Private swimming pools
Studios	Recycling collection facilities, small	Required parking areas
Two-family dwellings	Self-storage facilities	Signs accessory to approved uses
	Taverns	Satellite dish antennas
	Theaters	Yard sales
	Veterinary clinics	
	Wholesale businesses	

NOTES:

- Uses not specifically listed by this schedule shall not be permitted in the C-1 District.
- Larger lot size may be required by other sections of this chapter.

Schedule of Uses**C-2 — Highway Commercial District**

INTENT: To provide for higher-intensity commercial uses in a location with access to Route 6, which serves as the area's major arterial highway.

Principal Permitted Uses	Conditional Uses	Special Exceptions
(Zoning Officer)	(Planning Commission/Council)	(Planning Commission/ZHB)
Amusement arcades	Abused persons shelter	Public and semipublic buildings and uses
Bed-and-breakfast establishments	Banks	Schools, public and private, primary and secondary
Boarding and lodging houses	Betting uses	
	Bus terminals	
Borough facilities and uses	Car and truck washes	
Clubs/lodges, private	Cemeteries and mausoleums	Accessory Uses
Day care, child and adult	Colleges and universities	(Zoning Officer)
Forestry enterprises	Commercial communications devices	Accessory uses customary to approved uses
Funeral parlors	Country clubs	Essential services
Group homes (See § 400-23)	Detention facilities	Home gardens, home
Medical clinics	Flea markets	greenhouses and home nurseries
Office buildings	Funeral parlors	Private garages, carports, sheds
Places of worship	Gasoline service station	Private stables
Professional offices	Golf courses	Private swimming pools
Recycling units, mobile	Golf courses, miniature	Required parking areas

Schedule of Uses

C-2 — Highway Commercial District

INTENT: To provide for higher-intensity commercial uses in a location with access to Route 6, which serves as the area's major arterial highway.

Principal Permitted Uses (Zoning Officer)	Conditional Uses (Planning Commission/Council)	Special Exceptions (Planning Commission/ ZHB)
Restaurants, traditional	Golf driving ranges	Signs accessory to approved uses
Retail businesses	Greenhouses, commercial	Satellite dish antennas
Service establishments	Health facilities	
Studios	Home occupations, unless classified as an accessory use by § 400-17C(13)	Yard sales
Taverns		
Veterinary clinics		
Wholesale businesses		
	Hotels	
	Manufacturing, light	
	Motels	
	Multifamily dwellings and projects	
	Recreational facilities, private	
	Recycling collection facilities, small	
	Restaurants, fast-food	
	Self-storage facilities	
	Shopping centers and malls	
	Single-family detached dwellings	
	Storage yard for forest products and minerals	
	Temporary commercial uses	
	Theaters	

Schedule of Uses

C-2 — Highway Commercial District

INTENT: To provide for higher-intensity commercial uses in a location with access to Route 6, which serves as the area's major arterial highway.

Principal Permitted Uses (Zoning Officer)	Conditional Uses (Planning Commission/Council)	Special Exceptions (Planning Commission/ ZHB)
	Treatment centers/ clinics	
	Two-family dwellings	
	Vehicle or equipment rental, repair or sales operation	
	Warehouses	

NOTES:

- Uses not specifically listed by this schedule shall not be permitted in the C-2 District.
- Larger lot size may be required by other sections of this chapter.

Schedule of Uses

M-1 — Manufacturing District

INTENT: To provide for manufacturing and industrial uses in a location that will minimize conflicts with residential uses and to allow other commercial uses not incompatible with manufacturing and industry.

Principal Permitted Uses (Zoning Officer)	Conditional Uses (Planning Commission/Council)	Special Exceptions (Planning Commission/ZHB)
Amusement arcades	All conditional uses in the C-2 District, except dwellings	Public and semipublic buildings and uses
Bed-and-breakfast establishments	Adult businesses	Schools, public and private, primary and secondary
Boarding and lodging houses	Agricultural products processing	
Borough facilities and uses		
Clubs/lodges, private	Amusement parks	Accessory Uses (Zoning Officer)
Day care, child and adult	Bulk-fuel-storage facilities	Accessory uses customary to approved uses
Forestry enterprises	Construction and trades contractors	
Funeral parlors	Crematoria	
Group homes (see § 400-23)	Detention facilities	Essential services
Medical clinics	Junkyards	Home gardens, home greenhouses and home nurseries
Office buildings	Manufacturing and industry	Private garages, carports, sheds
Places of worship	Manufacturing, light	Private stables
Professional offices	Mineral processing	Private swimming pools
Recycling units, mobile	Recycling facilities	Required parking areas
Restaurants, traditional	Self-storage facilities	Signs accessory to approved uses
Retail businesses	Solid waste facilities, commercial and public	Satellite dish antennas
Service establishments	Solid waste staging areas	Yard sales
Studios		

Schedule of Uses

M-1 — Manufacturing District

INTENT: To provide for manufacturing and industrial uses in a location that will minimize conflicts with residential uses and to allow other commercial uses not incompatible with manufacturing and industry.

Principal Permitted Uses	Conditional Uses	Special Exceptions
(Zoning Officer)	(Planning Commission/Council)	(Planning Commission/ZHB)
Taverns	Truck terminals	
Veterinary clinics	Warehouses	
Wholesale businesses		

NOTES:

- Uses not specifically listed by this schedule shall not be permitted in the M-1 District.
- Larger lot size may be required by other sections of this chapter.

B. Proposed uses not specified in chapter.

- (1) Jurisdiction. Whenever a proposed use for a particular parcel is not listed as a use allowed in any of the various zoning districts established under this chapter and an application is made to the Zoning Officer for such use, the application shall be submitted to the Zoning Hearing Board, which shall have the authority to permit the use or deny the use as a special exception on an individual basis.
- (2) Findings. The use may be permitted only if the Zoning Hearing Board makes all of the following findings, and the burden of proof shall be upon the applicant:
 - (a) The use is similar to and compatible with the uses listed for the subject zoning district by the Schedule of Use Regulations.
 - (b) The use in no way conflicts with the intent of the zoning district and the general purpose and intent of this chapter.
 - (c) The use is not allowed in any other zoning district.
- (3) Planning Commission review. At the time the application is submitted to the Zoning Hearing Board, the Zoning Officer shall also provide a copy to the Borough Planning Commission for its recommendation. The Zoning Hearing Board shall not conduct a public hearing on the application until the comments from the Planning Commission are received or 30 days have passed from the time the application was referred to the Planning Commission.
- (4) Conditions. In its decision, the Zoning Hearing Board may attach reasonable conditions and safeguards to any special exception approval granted, incorporating standards in this chapter for similar uses in the district and such

other conditions as the Zoning Hearing Board may deem necessary to protect and promote the public health, safety, morals and welfare and to implement the purposes of this chapter and the Pennsylvania Municipalities Planning Code.¹⁰¹

- C. Development standards. The Schedule of Development Standards, which follows, establishes minimum standards for lot area, lot depth, average lot width and front, side and rear yards and establishes maximum standards for building height and lot coverage. The standards also establish specific standards and criteria that apply to the use as may be appropriate to protect the public health, safety and welfare. Larger lot sizes, increased setbacks and other more-restrictive standards may be required in accord with other chapter sections.

Schedule of Development Standards

Single-Family Dwellings and Permitted Nonresidential Uses — R-R, R-1 and R-2 Districts

Standards (other provisions of this chapter may require more-restrictive standards)	All Lots in R-1 and R-2 Served by On-Lot Sewage	Served by Central/Community Sewage		
		All Lots in R-R	R-1	R-2
Minimum lot size (square feet)	43,560	80,000	30,000	20,000
Minimum lot frontage (feet)	150	200	125	100
Maximum lot depth-to-width ratio	4:1	4:1	4:1	4:1
Minimum yards (feet)				
Front yard	50	50	50	30
Rear yard	50	50	50	40
Side yard (one)	25	25	25	12
Side yard (total combined)	50	50	50	40
Maximum lot coverage (percent)	20%	15%	25%	30%
Maximum building height				
Stories	2.5	2.5	2.5	2.5
Feet	35	35	35	35

101.Editor's Note: See 53 P.S. § 10101 et seq.

Schedule of Development Standards
Two-Family Dwellings — All Districts Where Permitted

Type of Structure	Served by On-Lot Sewage		Served by Central/ Community Sewage	
	Side-by-Side	Over-Under	Side-by-Side	Over-Under
Minimum lot size (square feet per unit)	43,560	43,560	10,000	10,000
Minimum lot frontage (feet)	200	150	100	85
Maximum lot depth- to-width ratio	4:1	4:1	4:1	4:1
Minimum yards (feet)				
Front yard	30	30	30	30
Rear yard	40	40	40	40
Side yard (one)	12	12	12	12
Side yard (total combined)	40	40	40	40
Maximum lot coverage (percent)	30%	30%	25%	30%
Maximum building height				
Stories	2.5	2.5	2.5	2.5
Feet	35	35	35	35
Multifamily dwellings — See § 400-21				
Mobile home parks — See § 400-25				

Schedule of Development Standards

C-1, C-2 and M-1 Districts

**Where Permitted, Single-Family
Dwellings with Central/
Community Sewage Disposal and
All Other Uses Permitted**

Standards (other provisions of this chapter may require more-restrictive standards)	Where Permitted, Single-Family Dwellings with On-Lot Sewage			
		C-1	C-2	M-1
Minimum lot size (square feet)	43,560	10,000	20,000	20,000
Minimum lot frontage (feet)	150	50	100	100

Schedule of Development Standards**C-1, C-2 and M-1 Districts****Where Permitted, Single-Family
Dwellings with Central/
Community Sewage Disposal and
All Other Uses Permitted**

Standards (other provisions of this chapter may require more-restrictive standards)	Where Permitted, Single-Family Dwellings with On-Lot Sewage	C-1	C-2	M-1
Minimum lot depth (feet)	None	100	150	150
Maximum lot depth-to-width ratio	4:1	4:1	4:1	4:1
Minimum yards (feet)				
Front yard	50	0	25	50
Rear yard	50	10	25	50
Side yard	25	5*	15	20

* May be reduced to 0 feet for common walls of nonresidential buildings.

Nonresidential Uses

	Single-Family Dwellings with On-Lot Sewage	C-1	C-2	M-1
Maximum lot coverage (percent) — Single-family dwellings	20%	40%	NA	NA
Maximum lot coverage (percent) — Nonresidential uses, C-1 and C-2 — 10% of parking areas must be landscaped islands	NA	100%	75%	75%
Maximum building height				
Stories	2.5	3	3	3
Feet	35	40	40	40

ARTICLE V
Supplementary Regulations

§ 400-14. Introduction.

The standards that follow shall be applied to the specific situations indicated and are intended to supplement the standards in Article IV. Standards contained in a specific section regulating a specific use shall not exempt said use from other applicable regulations contained in this chapter.

§ 400-15. Deviations from required sizes.

No part of any structure, whether attached to the principal structure or not, including but not limited to porches, carports, decks, balconies, chimneys, bay windows or overhangs, shall project into any required yard. No lot, yard or other space shall be so reduced in area or dimension as to make it less than the minimum required by this chapter, except as follows:

- A. Nonconforming lots of record. See § 400-57 of this chapter.
- B. Access drives; driveways. Access drives serving a permitted use shall be permitted in all yards except as may be otherwise regulated by this chapter, and provided that a buffer of five feet is maintained from rear and side property lines.
- C. Front yard exception. Where a vacant lot exists between two improved lots, each of which has a building within 25 feet of the property line separating the parcels, a building may be erected on the vacant lot with a front yard not less than the greater front yard of the two adjoining buildings. However, the front yard setback shall not in any case be reduced to less than 10 feet; except in the C-1 District, where the setback may be reduced to zero feet.
- D. Height limitations. Unless otherwise regulated by this chapter, height regulations shall not apply to the following; however, any such structure which exceeds a height of 50 feet shall be considered a conditional use:
 - (1) Spires, belfries, cupolas and domes not used for human occupancy.
 - (2) Chimneys, ventilators, skylights, bulkheads, ornamental or necessary mechanical appurtenances, monuments, silos and water towers.
 - (3) Masts, aerials, television antennas which are accessory to principal buildings. Masts, aerials, television antennas which are accessory to principal buildings. These height exceptions shall not apply to any communications antennas or communications towers as regulated by § 400-37 of this chapter.
 - (4) Parapet walls extending not more than four feet above the regulated height of the building.
 - (5) Public utility structures that are not buildings.
- E. Extension of nonconforming setbacks. A structure which is nonconforming as to a setback requirement may be extended along the nonconforming setback line a distance not to exceed 50% of the length of the nonconforming part of the structure

as it existed at the effective date of this chapter.

- F. Projections into yards. (See § 400-17A for accessory structures.) Certain architectural features may project into required yards as follows:
- (1) Cornices, canopies, eaves, and other architectural features may project a distance not exceeding two inches per one foot of side yard width but not exceeding a total projection of three feet.
 - (2) Fire escapes may project a distance not exceeding four feet six inches.
 - (3) Any stair and necessary landings may project a distance not exceeding six feet, provided the stair and landing does not extend above the first floor of the building.
 - (4) Bay windows, balconies, fireplaces and chimneys may project a distance not exceeding three feet, provided that such features do not occupy, in the aggregate, more than 1/3 of the length of the building wall on which the feature(s) are located.
 - (5) Patios may be located in required yards not less than 20 feet to any public road right-of-way or 10 feet to any property line.
- G. Reduction of required area or space. The area or dimension of any existing lot, yard, parking area or other space shall not be reduced to less than the minimum required by this chapter.

§ 400-16. Unique lots, yards and building locations.

- A. Two or more uses on a lot.
- (1) Development standards. Two or more principal buildings or uses located on a parcel in single ownership shall conform to all the requirements of this chapter which would normally apply to each building or use if each were on a separate district lot, including but not limited to setbacks, parking, lot coverage, and sewage disposal requirements.
 - (2) Residential density. For the purposes of density of residential structures, lot size shall be increased to maintain the density required by this chapter. For example, the parcel size required for three single-family dwellings on one parcel would be determined by multiplying the minimum lot size for one dwelling by a factor of three.
 - (3) Nonresidential uses. In the case of nonresidential uses, there shall be no limit on the number of uses or structures on a single parcel, provided all other standards of this chapter are satisfied. This shall not apply to adult businesses, junkyards, natural resource uses, solid waste facilities, or other uses with a special size requirement listed in this chapter, in which case the parcel size shall be increased to provide for the minimum land area for each use on the parcel.
 - (4) Residential and nonresidential on the same lot. In the C-1, C-2 and M-1 Districts, one residential unit per property shall be permitted in association

with a nonresidential use(s) without an increase in the minimum lot size requirement, provided said unit is attached to and is an integral part of the principal nonresidential structure. The residential unit shall be occupied only by the owner or employee of the nonresidential use(s). In the case of the C-1 District, the occupancy of the residential unit shall not be restricted, provided the unit is situated on the second floor of the nonresidential use. Any additional residential dwelling units, if provided for in the district by the Schedule of Uses, shall be permitted on the same lot as a nonresidential use only if the lot is of sufficient size to meet the residential unit density required by this chapter in addition to the land area needed to meet the density requirement for the nonresidential use.

- (5) Structure separation. Principal structures located on the same lot shall be separated by a distance at least equal to the height of the highest adjoining structure, but in no case less than 20 feet. (See § 400-17A for accessory structures.)
- B. Street frontage/front yards. A principal building shall be permitted only upon a lot with frontage on a public or private road right-of-way. Each yard of a lot which abuts a street shall be equal in size to the front yard required for the district. Any other yards may be considered side yards.
- C. Clear view at street intersections. Visual obstructions at street intersection, including, but not limited to, structures, opaque fences, vegetation and signs, (excluding an existing building, post, public utility structures, column or deciduous tree) greater than 30 inches in height, shall be prohibited on any lot within the triangle formed by the street right-of-way lines and a line drawn between points along the street right-of-way lines 30 feet distant from their points of intersection. More-restrictive standards shall be required in cases where intersection alignment, topography or other circumstances dictate same to maintain adequate clear view.

§ 400-17. Accessory structures and uses.

- A. Accessory structures. All accessory structures shall conform to the minimum regulations established in Article IV except as permitted below.
 - (1) Unattached accessory structures. All unattached accessory structures shall comply with yard requirements for principal structures. However, accessory structures which are not attached to a principal structure and do not exceed 10 feet in height and 200 square feet in total floor area may be erected within the required side and rear yards of a principal structure, provided that no side or rear yard is reduced to less than 10 feet. In the case of corner lots, the full yard as specified in § 400-16B shall be maintained.
 - (2) Attached accessory structures. An accessory structure attached to a principal building shall be considered to be a part of the principal building and shall conform to the setbacks for principal structures.
- B. Fences and walls. The erection of any fence or wall in all districts shall not require a zoning permit, but shall be subject to the following provisions:
 - (1) All fences and walls shall comply with § 400-16C of this chapter for clear

sight triangles.

- (2) Fences and walls may be erected in front yards; however, no such fence or wall shall encroach upon any public right-of-way.
 - (3) No fence shall exceed a height of 10 feet except for agricultural fences.
 - (4) Fences and walls may be erected on a side or rear property line, provided said property line is clearly located and physically marked on the lots by lot line markers placed in accord with a survey conducted by a registered land surveyor, and the owners of said lots present to the Borough a written document executed between said owners establishing agreement for erection of the subject fence or wall.
 - (5) Fences or walls not located on the property line in accord with Subsection B(4) above shall maintain the required front yard setback and shall be set back from side and rear lot lines at least two feet.
 - (6) All fence posts and other structural supports shall be located on the side of said fence towards the interior of the property owned by the person erecting the subject fence.
- C. Home occupations. It is the intent of this subsection to regulate the operation of home occupations so that the average neighbor, under normal circumstances, will not be aware of the existence of the home occupation. The burden of proof shall be on the applicant to demonstrate that the standards will be met. Based upon the potential nuisances of a proposed home occupation not specifically permitted by this section, the Borough Council may determine that a particular type or intensity of use is unsuitable to be a home occupation or that the proposed lot area or setbacks are not adequate. The following standards shall apply:
- (1) The home occupation(s) must be conducted entirely inside a building and shall be clearly incidental and secondary to the use of the dwelling as a residence.
 - (2) The total area used by all home occupations on the premises does not exceed 50% of the gross floor area of the dwelling unit including basement and accessory structures as existed at the effective date of this chapter.
 - (3) No outdoor display or display visible from out of doors or outdoor storage of materials, goods, products, supplies or equipment used in the home occupation(s).
 - (4) There shall be no evidence visible from outside the dwelling (show windows, business displays, advertising, etc.) that the residence is being operated as a home occupation, except for a sign, if permitted, and required parking area.
 - (5) The home occupation shall be conducted only by members of the family residing in the dwelling and not more than two persons other than residents of the dwelling shall be employed on the premises, with not more than a total of four residents and nonresidents permitted.
 - (6) Off-street parking shall be provided on the premises as required by this chapter to prevent parking on any public or private street right-of-way.

- (7) No home occupation use shall generate nuisances such as traffic, noise, vibration, glare, odors, fumes, electrical interference, or hazards to any greater extent than what is usually experienced in the residential neighborhood.
 - (8) No goods or items for retail or wholesale sale shall be stored on the premises except for items handcrafted on the premises or goods and items incidental to the operation of an approved home occupation with the total display and/or storage area limited to 200 square feet.
 - (9) The use shall not require servicing by or parking of tractor-trailer trucks.
 - (10) One two-sided sign not exceeding four square feet in area shall be permitted to identify the home occupation(s).
 - (11) Section 400-29, Performance standards, shall also apply to home occupations.
 - (12) The following uses shall not be permitted as home occupations: commercial stables, veterinarians, commercial kennels or motor vehicle or small engine repair shops, retail or wholesale sales, restaurants, funeral parlors or other uses not meeting the requirements of this § 400-17C.
 - (13) The following types of uses shall be permitted as accessory uses in all districts:
 - (a) Professional offices for individual practitioners.
 - (b) Rooming and/or housing of not more than two persons.
 - (c) Custom dressmaking or tailoring.
 - (d) Day care that provides care for six or fewer children at any one time who are not relatives of the caregiver.
 - (e) Tutoring or teaching for not more than six students during any twenty-four-hour period.
 - (f) Mail order or sales businesses not involving customer contact on the premises or wholesale brokering not involving stock on the premises.
 - (g) Businesses involving the use of personal computers for sales or services and which do not involve customer contact on the premises.
 - (h) Single-chair beauty shops and barbershops.
 - (14) All applications for home occupations not specifically enumerated as permitted in § 400-17C(13) or excluded by § 400-17C(12) shall be considered conditional uses.
- D. Private parking areas, garages. Accessory off-street parking areas or garages serving the residential or nonresidential parking demand created by the principal building are permitted in accord with § 400-18. Accessory garages shall conform with § 400-17A.
- E. Home gardening, nurseries and greenhouses. Home gardening and accessory structures used for nurseries or as greenhouses are permitted in residential areas, provided they are used by the residents thereof for noncommercial purposes.

F. Private outdoor swimming pools.

- (1) Private outdoor swimming pools are permitted as an accessory use to a residential structure, provided that such swimming pool is for the private use of the residents of the dwelling unit or for their guests. Pools and decks shall comply with setbacks for accessory structures.
- (2) A fence, wall or other enclosure not less than four feet high and of a design to restrict access shall completely surround the area of any ground-level swimming pool. This enclosure shall be designed to be difficult for children to climb or slip through. All gates or door openings through such enclosure shall be self-closing and include a self-latching device on the pool side for keeping the gate or door securely closed when the pool is not in use.
- (3) Aboveground pools shall include a secure fence, wall or other enclosure a minimum of four feet high above the surrounding ground level. This enclosure may include the walls of the pool itself. Such pools shall be equipped with an access ladder that can be raised and locked in a position so that it is a minimum of four feet above the surrounding ground level or otherwise completely inaccessible to children when the pool is unattended.
- (4) Access to all pools shall be restricted when the pool is not in use, whether by fence, wall or integrated in the design of the pool. A pool cover shall not be deemed adequate to meet this requirement.
- (5) A zoning permit or fence shall not be required for wading pools where the water does not exceed 10 inches in depth and which are not normally filled on a constant basis.
- (6) The Borough does not assume the responsibility of guaranteeing to the public that all pools comply with the provisions of this § 400-17F.
- (7) Farm ponds and decorative ponds shall be exempt from this § 400-17F.

G. Yard sales. Individual private family yard sales are a permitted accessory use in all zoning districts. A permit shall not be required; however, yard sales shall be subject to the following specific regulations and requirements:

- (1) Each individual property location may have a maximum of three yard sales during any one calendar year. Each sale shall last a maximum of three consecutive days.
- (2) Yard sales are meant to allow individuals to offer for sale accumulated normal household items or arts and crafts, and the buying and selling of commercial or surplus material shall be considered a commercial operation and shall be prohibited except in districts where permitted and in accord with the requirements of this chapter.

H. Private cemeteries. Private cemeteries shall be permitted as an accessory use in association with parcels of 10 acres or more, with the cemetery to be on a separately deeded parcel of 1/2 acre.

I. Stables, private. Private stables are permitted in accord with the Schedule of Uses,

subject to the requirements of § 400-36B of this chapter.

- J. Temporary and portable structures. Temporary and portable structures (see definitions in Article III) shall be limited to use only as accessory structures, and a permit shall be required. The use of temporary or portable structures for commercial purposes shall only be permitted as an accessory use to another lawfully existing nonresidential use, subject to the following: (This shall not apply to special events conducted by community organizations.)
- (1) Number and timing. No more than two permits for a temporary and/or portable structure shall be issued for the same premises within one calendar year, and such structures may be erected and maintained for not more than 30 days for each permit period.
 - (2) Location. Tents shall not be erected in any required setback area and shall not encroach on any portion of a walkway, accessway or required parking or loading spaces.

§ 400-18. Off-street parking and loading.

- A. Availability of facilities. Off-street parking, loading and unloading facilities shall be provided to lessen congestion in the streets. The facilities required herein shall be available throughout the hours of operation of the particular business or use for which such facilities are provided. As used herein, the term "parking space" includes either covered garage space or uncovered parking lot space located off the public right-of-way.
- B. Size and design of parking spaces. Parking shall be provided in accord with an overall parking plan prepared in accord with generally accepted design standards and which takes into consideration access design and control, size and shape of the parking area; types of vehicles using the parking area; traffic patterns and other applicable considerations. The net parking space per vehicle shall be not less than nine feet wide and 18 feet long. Garages and carports not in the public right-of-way may be considered parking spaces. Notwithstanding the above, all parking spaces shall be ample in size for the vehicles for which use is intended.
- C. Lighting. Any lighting used to illuminate any off-street parking shall be so arranged as to reflect the light away from adjoining premises and public rights-of-way.
- D. Public rights-of-way. Parking, loading and unloading of vehicles shall not be permitted on public rights-of-way, except in designated areas and in accord with Borough parking regulations. No parking area shall be designed which requires or encourages parked vehicles to be backed into a public street.
- E. Number of spaces to be provided.
- (1) Any structure or building which is hereafter erected, converted or enlarged for any of the following uses, or any open area hereafter used for commercial purposes, shall be provided with off-street parking spaces adequate to serve such use, but with not less than the minimum spaces as set forth in the following table, which spaces shall be readily accessible to the uses served thereby. Fractional numbers of parking spaces shall be increased to the next

whole number.

- (2) For projects involving more than one use and/or structure, the total number of parking spaces required shall be determined by the sum of the number of spaces for each individual use.
- (3) Additional parking for the handicapped shall be provided in accord with § 400-18N.
- (4) Should the applicant for a nonresidential use provide evidence that the number of parking spaces required by this § 400-18 is not necessarily required to meet the immediate needs of the proposed use, the number of spaces provided may be reduced as a conditional use by a maximum of 50%, provided sufficient and suitable area is dedicated to future parking to meet the normal standards in this § 400-18 and the applicant shall agree in writing to install the parking at the direction of the Borough Council. Reserve parking areas shall be included in the calculation of lot coverage area. Parking facilities used jointly by two or more principal uses may be considered for a parking reduction (see § 400-18K).

Use	Parking Spaces Required
Dwellings	2 per dwelling unit
Elderly housing	1.5 per dwelling unit
Homes for handicapped or infirm, nursing homes, group care homes, halfway houses and similar uses	3 per 5 beds
Hotels, motels, boarding and tourist homes, bed-and-breakfast establishments and other uses providing overnight accommodations	1.1 per bedroom
Sales and rental of goods, merchandise and equipment	
Retail establishments	1 per 200 SFGFA open to the public
Wholesale establishments	1 per 800 SFGFA
Flea markets, outdoor markets	1 per 200 square feet of lot area designated for display or sales
Offices, research facilities and services not primarily related to goods	
Serving customers or clients on premises such as attorneys, physicians, insurance and travel agents	1 per 200 SFGFA
Drive-in banks	1 per 200 SFGFA open to the public plus reservoir lane capacity equal to 5 spaces per drive-in window

Use	Parking Spaces Required
Serving few customers or clients on premises, such as corporate offices	1 per 250 SFGFA
Funeral homes	1 per 100 SFGFA open to the public
Manufacturing, processing, renovating, assembling goods, merchandise and equipment	1 per 600 SFGFA
Educational, cultural, religious, social, fraternal uses	
Public schools	1.75 per classroom for elementary and middle schools; 5 per classroom for high schools
Trade and vocational schools; colleges	1 per 100 SFGFA open to the public
Churches, synagogues and temples	1 per every 4 seats used for services
Libraries and museums, community buildings, social halls, fraternal clubs and lodges, and similar uses	1 per 300 SFGFA open to the public
Recreation, amusement and entertainment	
Bowling alleys, skating rinks, indoor athletic or exercise facilities, and similar uses	1 per every 3 persons of fully utilized design capacity (if measurable in such fashion), otherwise 1 per 200 SFGFA
Movie theaters, stadiums, and similar uses with seating accommodations	1 per every 3 seats
Public and private outdoor recreation facilities such as country clubs, golf courses, swimming pools and similar uses	1 per 200 SFGFA open to the public plus 1 per every 2 persons of fully utilized design capacity
Commercial watercraft docking facilities, including such facilities at waterfront marinas	2 per every 3 slips
Hospitals, clinics and other medical/dental treatment facilities	1 per bed or 1 per 200 SFGFA, whichever is greater
Restaurants, bars, taverns and other eating establishments	1 per 50 SFGFA open to the public plus reservoir lane capacity equal to 5 spaces per drive-in window
Vehicle-related uses (see definition of "vehicle" in Article III)	

Use	Parking Spaces Required
Sales, service, repair	1 per 250 SFGFA
Gas sales	1 per 250 SFGFA plus sufficient parking area at pumps which does not interfere with other required spaces
Car wash	1 per 100 SFGFA plus 2 reservoir spaces in front of each stall for self-serve and 5 reservoir spaces for conveyor type
Warehousing and storage	1 per 4,000 SFGFA
Miscellaneous uses	
Veterinary	1 per 200 SFGFA open to the public
Nursery schools and day care	1 per 150 SFGFA open to the public
Greenhouses	1 per 200 SFGFA open to the public
Emergency services	1 per 200 SFGFA open to the public
Junk and scrap yards	1 per 200 SFGFA open to the public
Post office	1 per 200 SFGFA open to the public

Note: SFGFA means "square feet of gross floor area." Gross floor area is the sum of the total horizontal areas of the several floors of a building measured from the exterior face of exterior walls or from the center line of a wall separating two buildings, but not including interior parking spaces, loading space for vehicles, or any space where the floor-to-ceiling height is less than six feet.

- (5) For uses not specifically provided above, the Borough shall determine the required number of spaces based upon the similarity of the proposed use to the uses provided.
- F. Loading and unloading areas. In addition to the required off-street parking spaces, the developer of any building erected, converted or enlarged in any district for commercial, office building, hotel, motel, restaurant, manufacturing, wholesale, hospital or other nonresidential uses is to provide adequate off-street areas for loading and unloading of vehicles. The applicant shall provide details on the type and frequency of vehicles operating in connection with the proposed use to justify the loading and unloading areas proposed. Each required space shall meet the following dimensions:

	Minimum Width	Minimum Length
Largest Type of Truck Service	(feet)	(feet)
Tractor-trailer	12	40 with 12 feet clear height
Trucks other than tractor-trailers, pickups or vans	10	25

	Minimum Width	Minimum Length
Largest Type of Truck Service	(feet)	(feet)
Pickup truck or van	9	18

G. Access to off-street parking and loading areas. There shall be adequate provisions for ingress and egress to all parking and loading spaces designed for use by employees, customers, delivery services, sales people and/or the general public. Access to and from all off-street parking, loading and vehicle service areas along public rights-of-way shall consist of well-defined separate or common entrances and exits and shall comply with the following provisions:

- (1) Width. Unless otherwise required by PennDOT for access to a state road, the width of the driveway/accessway onto a public street at the edge of the cartway shall be as follows:

	1-Way Use	2-Way Use
Width	(feet)	(feet)
Minimum	12	20
Maximum	35	50

- (2) Controlled access. Each entrance and exit shall be clearly defined with curbing, fencing, landscaping or vegetative screening so as to prevent access to the area from other than the defined entrance and exit.
- (3) Highway occupancy permit. A Borough or state highway occupancy permit, as applicable, shall be required for any new or escalated access to any public street or any other regulated activity within the right-of-way.

H. Parking and loading area setbacks. All parking and loading areas (not including parking decks) and parallel circulation and service lanes serving any commercial, industrial, institutional or multifamily use shall be separated from the any public road right-of-way or adjoining property lines by a buffer area not less than five feet wide in C-1 Districts and 15 feet wide in all other districts, unless adjoining uses share parking in accord with § 400-18K.

- (1) Measurement. The width of the buffer shall be measured from the curbline or from the legal right-of-way line after development if no curbs will be provided.
- (2) Uses prohibited. The buffer area shall be maintained in natural vegetative ground cover and shall not include:
 - (a) Paving except for approved driveway/accessway crossings.
 - (b) Fences unless integral to landscaping.
 - (c) Parking, storage or display of vehicles.
 - (d) Items for sale or rent.
- (3) Uses permitted. The buffer area may include the following:

- (a) Permitted freestanding signs.
 - (b) Pervious stormwater facilities.
 - (c) Approved driveway/accessway crossings.
- (4) Sidewalks. If sidewalks exist or will be provided, the buffer area may be provided between the sidewalk and the street or between the sidewalk and the paving.
- I. Surfacing. Off-street parking areas and driveways/accessways shall be graded for proper drainage and shall be surfaced so as to provide a durable and dustless surface, such as a gravel, concrete or bituminous concrete surface.
- J. Off-lot parking. Required parking may be provided on a different lot than on the lot on which the principal use is located, provided the parking is not more than 400 feet from the principal use lot. Off-lot parking areas shall be permitted only in a district where the principal use is permitted. Both parcels shall be under the same control, either by deed or long-term lease, as the property occupied by such principal use, and the owner shall be bound by covenants of record filed in the office of the County Recorder of Deeds requiring the owner and his or her heirs and assigns to maintain the required number of off-street parking spaces during the existence of said principal use.
- K. Joint-use parking. In cases where two principal uses share a common property line, shared parking facilities may be utilized. The arrangement for joint-use parking shall be provided by deed restriction for the portion of each parcel included in the shared arrangement. The joint-use parking area may span the common property line thereby eliminating the setback required in § 400-18H. The standards in § 400-18E for number of spaces to be provided shall apply to joint-use parking. To the extent that principal uses operate at different times, the same spaces may be credited to both uses. (Example: If a church parking lot is generally occupied only to 10% of capacity on days other than a Sunday, another development not operating on a Sunday could make use of the unused church lot spaces on weekdays.)
- L. Existing parking areas. No existing parking area or any off-street parking shall be eliminated, reduced in size or otherwise altered so that any use is served by less parking than is required by this chapter.
- M. Parking for residential use. Off-street parking shall be provided in accord with this § 400-18 for all residential uses in all districts.
- N. Handicapped parking. Handicapped spaces shall be provided in accord with applicable state and federal regulations.

ARTICLE VI
Residential Standards

§ 400-19. Conservation Design Overlay District.

A. Purposes and development options.

- (1) Purposes. In conformance with the Pennsylvania Municipalities Planning Code,¹⁰² the purposes of this section, among others, are as follows:
 - (a) To conserve open land, including those areas containing unique and sensitive natural features such as woodlands, steep slopes, streams, floodplains and wetlands, by setting them aside from development.
 - (b) To provide greater design flexibility and efficiency in the siting of services and infrastructure, including the opportunity to reduce length of roads, utility runs, and the amount of paving required for residential development.
 - (c) To reduce erosion and sedimentation by the retention of existing vegetation and the minimization of development on steep slopes.
 - (d) To provide for a diversity of lot sizes, building densities, and housing choices to accommodate a variety of age and income groups and residential preferences, so that the community's population diversity may be maintained.
 - (e) To implement adopted municipal policies to conserve a variety of irreplaceable and environmentally sensitive resource lands as set forth in the Borough Comprehensive Plan, including provisions for reasonable incentives to create a greenway system for the benefit of present and future residents.
 - (f) To implement adopted land use, transportation and community policies, as identified in the Borough's Comprehensive Plan.
 - (g) To protect areas of the Borough with productive agricultural soils for continued or future agricultural use by conserving blocks of land large enough to allow for efficient farm operations.
 - (h) To create neighborhoods with direct visual access to open land, with amenities in the form of neighborhood open space, and with a strong neighborhood identity.
 - (i) To provide for the conservation and maintenance of open land within the Borough to achieve the above-mentioned goals and for active or passive recreational use by residents.
 - (j) To provide multiple options for landowners in order to minimize impacts on environmental resources (sensitive lands such as wetlands, floodplain and steep slopes) and disturbance of natural or cultural features (such as

102.Editor's Note: See 53 P.S. § 10101 et seq.

mature woodlands, hedgerows and tree lines, critical wildlife habitats, historic buildings, and fieldstone walls).

- (k) To provide standards reflecting the varying circumstances and interests of individual landowners and the individual characteristics of their properties.
 - (l) To conserve scenic views and elements of the Borough's rural character and to minimize perceived density by minimizing views of new development from existing roads.
- (2) By-right development options. In order to achieve these purposes, this § 400-19 provides for flexibility in designing new residential subdivisions by allowing two forms of by-right development referred to as "options," as summarized below:
 - (a) Option one: Increased Density and Basic Conservation, providing for residential uses at an increased density than permitted by the underlying zoning with not less than 50% of the tract comprised of conservation open space.
 - (b) Option two: Greater Density with Greater Conservation, providing residential uses at a density increased than the density permitted by the underlying zoning with not less than 60% of the tract comprised of conservation open space.
- (3) Densities and required open space percentages: See § 400-19D.
- B. General regulations. The design of all new subdivisions in the Conservation Design Overlay District shall be governed by the following minimum standards:
 - (1) Ownership. The tract of land shall be controlled by the applicant and shall be developed as a single entity.
 - (2) Site suitability. As evidenced by the existing resources/site analysis plan, the preliminary subdivision plan, and the final subdivision plan, the tract incorporating this design option shall be suitable for supporting development in terms of environmental conditions, its size, and configuration.
 - (3) Combining the design options. The various layout and density options described in this section may be combined, at the discretion of the Borough, based upon demonstration by the applicant that such a combination would better fulfill the intent of this chapter, in particular the stated purposes of this section, as compared with applying a single option to the property.
 - (4) Intersections and access. The number of driveways entering onto existing public streets shall be minimized. Instead, the development shall make maximum use of driveways entering onto an internal local street. Intersections and access shall be governed by Chapter 300, Subdivision and Land Development.
 - (5) Sensitive area disturbance. The proposed design shall strictly minimize disturbance of environmentally sensitive areas, as shown on the existing

resources and site analysis plan. Lands within the one-hundred-year floodplain or having slopes in excess of 25% and rock outcroppings constitute such environmentally sensitive areas, where disturbance shall be strictly minimized. Demonstration by the applicant that these features will be protected by the proposed application shall be prerequisite to approval of both the preliminary subdivision plan and the final subdivision plan.

C. Minimum parcel size and use regulations. Tracts of six acres or more in the Conservation Design Overlay District may be used for the following purposes:

- (1) Single-family detached dwellings. Single-family detached dwellings in subdivisions using Option 1: Basic Conservation or Option 2: Greater Conservation.
- (2) Two-family dwelling units or townhouses. Two-family dwelling units or townhouses in subdivisions or land developments using Option 1: Basic Conservation or Option 2: Greater Conservation at the same density as single-family dwellings.
- (3) Conservation open space. Conservation open space comprising a portion of residential development, as specified above and according to requirements of § 400-19E.
- (4) Nonresidential uses. The following nonresidential uses:
 - (a) Agricultural uses, including horticultural, wholesale nurseries, and the raising of crops, and buildings related to the same.
 - (b) Wood lots, arboreta, and other similar silvicultural uses.
 - (c) Woodland preserve, game preserve, wildlife sanctuary, or other similar conservation use.
 - (d) Municipal or public uses; public park or recreation area owned and operated by a public or private nonprofit entity or agency; governmental or public utility building or use; not to include business facilities, storage of materials, trucking or repair facilities, the housing of repair crews, private or municipal solid waste disposal facilities.
- (5) Accessory uses. Accessory uses shall be permitted on the same lot with and customarily incidental to any permitted use and not conducted as an independent principal use.

D. Density determination and dimensional standards.

- (1) Standards for Option 1 – increased density and basic conservation

Table 400-19D(1)(a)**Option 1 – Increased Density and Basic Conservation**

Served by Central/ Community Sewage				
Zoning District	Served by On-Lot Sewage in R-1 and R-2	All R-R	R-1	R-2
Density Requirements for Single-Family Dwellings				
Density factor (required land area per dwelling unit)	39,285 square feet	72,000 square feet	27,000 square feet	18,000 square feet
Density Requirements for Two-Family Dwellings				
Density factor (required land area per dwelling unit)	39,285 square feet	72,000 square feet	27,000 square feet	9,000 square feet
Central/Community Water and Sewage Required				
Zoning District	R-R	R-1	R-2	
Density Requirements for Townhouses				
Density factor (required land area per dwelling unit)	72,000 square feet	27,000 square feet	See § 400-21	

- (a) Density factor. One dwelling unit per the required area for the district (density factor) as shown in Table 400-19D(1)(a), as determined through the adjusted tract acreage approach or yield plan described in § 400-19D(4)(a). (The density factor is reduced by 10% from that of a standard subdivision.)
- (b) Minimum required conservation open space. The subdivision must include at least 40% of the adjusted tract acreage plus all of the constrained land calculated in § 400-19D(4)(a) as conservation open space.
- (c) Dimensional standards. The dimensional standards in Table 400-19D(1)(c) shall apply.

Table 400-19D(1)(c)**Option 1 – Increased Density and Basic Conservation****Dimensional Standards for Single-Family Detached and Two-Family Dwellings**

Minimum individual lot area	5,000 square feet
Minimum lot width at building line	60 feet

Table 400-19D(1)(c)**Option 1 – Increased Density and Basic Conservation**

Minimum street frontage	20 feet
Flag lots	Permitted in accord with provisions of Chapter 300, Subdivision and Land Development
Yard regulations - the principal building position and orientation should be varied	
Minimum front	20 feet
Minimum rear	30 feet; 20 feet where the rear yard adjoins conservation open space
Minimum side	30 feet separation of principal buildings
	No side yard less than 5 feet
Maximum lot coverage	40% per individual lot

Dimensional Standards for Townhouses

See § 400-19D(3)

- (2) Standards for Option 2 – greater density with greater conservation

Table 400-19D(2)(a)**Option 2 – Greater Density with Greater Conservation****Served by Central/ Community Sewage**

Zoning District	Served by On-Lot Sewage in R-1 and R-2			
	R-2	All R-R	R-1	R-2
Density Requirements for Single-Family Dwellings				
Density factor (required land area per dwelling unit)	37,100 square feet	68,000 square feet	25,500 square feet	17,000 square feet

Density Requirements for Two-Family Dwellings

Density factor (required land area per dwelling unit)	37,100 square feet	68,000 square feet	25,500 square feet	8,500 square feet
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Central/Community Water and Sewage Required

Zoning District	R-R	R-1	R-2
Density Requirements for Townhouses			
Density factor (required land area per dwelling unit)	68,000 square feet	25,500 square feet	See § 400-21

- (a) Density factor. One dwelling unit per the required area for the district (density factor) as shown in Table 400-19D(2)(a), as determined through the adjusted tract acreage approach or yield plan described in § 400-19D(4)(a). (The density factor is reduced by 15% from that of a standard subdivision.)
- (b) Minimum required conservation open space. The subdivision must include at least 60% of the adjusted tract acreage plus all of the constrained land calculated in § 400-19D(4)(a) as conservation open space. Conservation open space shall not be used for residential lots, except as provided below.
- (c) Dimensional standards. The dimensional standards in Table 400-19D(2)(c) shall apply.

Table 400-19D(2)(c)**Option 2 – Greater Density with Greater Conservation****Dimensional Standards for Single-Family Detached and Two-Family Dwellings**

Minimum individual lot area	5,000 square feet
Minimum lot width at building line	60 feet
Minimum street frontage	20 feet
Flag lots	Permitted in accord with provisions of Chapter 300, Subdivision and Land Development
Yard regulations - the principal building position and orientation should be varied.	
Minimum front	20 feet
Minimum rear	30 feet; 20 feet where the rear yard adjoins conservation open space
Minimum side	30 feet separation of principal buildings
	No side yard less than 5 feet
Maximum impervious coverage	40% per individual lot

Dimensional Standards for Townhouses

See § 400-19D(3)

- (3) Dimensional standards for townhouses in Option 1 – increased density and basic conservation and Option 2 – greater density with greater conservation subdivisions. The standards in Table 400-19D(3) shall apply.

Table 400-19D(3)**Option 1 and Option 2****Dimensional Standards for Townhouses**

Minimum individual lot area	None
Maximum lot depth-to-width ratio	5:1
Minimum lot width at building line	18 feet (24 feet if a 2-car garage or parking of 2 cars side by side is provided in the front)
Yard regulations - the principal building position and orientation should be varied.	
Minimum front	20 feet
Minimum rear	20 feet
Minimum side	35 feet separation of principal buildings
Maximum impervious coverage	70% per individual lot
Maximum height regulations	35 feet

- (4) Density determination for Option 1 – increased density and basic conservation and Option 2 – greater density with greater conservation subdivisions. Applicants shall have the choice of two methods of determining the maximum permitted residential building density on their properties. They are as follows:

- (a) Adjusted tract acreage approach. Determination of the maximum number of permitted dwelling units on any given property shall be based upon the adjusted tract acreage of the site. The adjusted tract acreage shall be determined by multiplying the acreage classified as being in the categories of constrained land (described below) by the numerical "density factor" for that category of constrained land, adding up all factored constrained land areas, and then deducting the total from the gross tract area.

- [1] The following areas of constrained land shall be deducted from the gross (total) tract area:

- [a] Rights-of-way. Multiply the acreage of land within the rights-of-way of existing public streets or highways, or within the rights-of-way for existing or proposed overhead rights-of-way of utility lines or any other rights-of-way, by 1.0.
- [b] Private streets: multiply the acreage of land under existing private streets by 1.0.
- [c] Wetlands: multiply the acreage of designated wetlands by 0.95.
- [d] Floodway: multiply the acreage within the floodway by 1.0.
- [e] Floodplain: multiply the non-wetland portion of the one-hundred-year floodplain by 0.5.

- [f] Steep slopes: multiply the acreage of land with natural ground slopes exceeding 25% by 0.80.
 - [g] Moderately steep slopes: multiply the acreage of land with natural ground slopes of between 15% and 25% by 0.60.
 - [h] Extensive rock outcroppings: multiply the total area of rock outcrops and boulder fields more than 1,000 square feet by 0.90.
 - [i] Ponds, lakes and streams: multiply the acreage of ponds, lakes and streams by 1.0.
- [2] If a portion of the tract is underlain by more than one natural feature subject to a deduction from the total tract acreage, that acreage shall be subject to the most restrictive deduction only.
- [3] Since acreage that is contained within the public or private rights-of-way, access easements or access strips is excluded from usable lot area, any portion of these items that also contains a natural feature subject to a deduction from the total tract acreage should not be included when calculating the adjusted tract acreage.
- (b) Yield plan approach. Determination of density or maximum number of permitted dwelling units shall be based upon density factor of the chosen option applied to the gross tract acreage, as demonstrated by an actual yield plan. Yield plans shall meet the following requirements:
- [1] SALDO requirements. Yield plans must be prepared in accordance with the standards of Chapter 300, Subdivision and Land Development, containing proposed lots, streets, rights-of-way, and other pertinent features. Although it must be drawn to scale, it need not be based on a field survey. However, it must be a realistic layout reflecting a development pattern that could reasonably be expected to be implemented, taking into account the presence of wetlands, floodplain, steep slopes, existing easements or encumbrances and, if unsewered, the suitability of soils for subsurface sewage disposal.
 - [2] Resource identification. The yield plan must identify the site's primary and secondary conservation areas, as identified in the existing resources/site analysis plan, and demonstrate that the primary conservation areas could be successfully absorbed in the development process without disturbance by allocating this area to proposed single-family dwelling lots which conform to the density factor of the chosen option. The yield plan shall be based upon accurate mapping of wetlands, one-hundred-year floodplains and land with slopes greater than 15%.
 - [3] Individual sewage disposal systems. On sites not served by central sewage disposal, density shall be further determined by evaluating the number of homes that could be supported by individual on-lot sewage disposal systems on conventional lots. Based on the primary

and secondary resources, identified as part of the inventory and analysis, and observations made during an on-site visit of the property, the Borough shall select a ten-percent sample of the lots considered to be marginal for on-lot sewage disposal. The applicant is required to provide evidence that these lots meet the standards for an individual on-lot sewage disposal system and system replacement area before the applicant shall be granted the full density determined by the yield plan. Should any of the lots in a sample fail to meet the standard for individual septic system, those lots shall be deducted from the yield plan and a second ten-percent sample shall be selected by the Borough and tested for compliance. This process shall be repeated until all lots in a given sample meet the standard for an individual on-lot sewage disposal system.

- [4] Yield plan density and dimensional standards. The following dimensional standards shall be used in the development of yield plans for Option 1 and Option 2 subdivisions. The minimum lot sizes are derived from the density factor for the district location of the proposed development and the type of water supply and sewage disposal proposed. These minimum area dimensions are exclusive of all wetlands, slopes greater than 25%, and land under high-tension electrical transmission lines (69 kV or greater). No more than 25% of the minimum required lot area may consist of land within the one-hundred-year floodplain, and only then if it is free of wetlands.

Table 400-19D(4)(b)[4]

Yield Plan Dimensional Standards

Minimum Lot Size (square feet) [per Table 400-19D(1)(a) and Table 400-19D(2)(a)]	Minimum Lot Width at Minimum Setback (feet)	Minimum Setback (feet)		
		Front	Rear	Side
68,000 and 72,000	200	35	50	25
37,100 and 39,285	150	35	50	25
25,500 and 27,000	125	35	35	25
17,000 and 18,000	100	35	25	15
8,500 and 9,000	70	30	25	10

- E. Design standards for Option 1 – basic conservation and Option 2 – greater conservation.

- (1) Dwelling lots. Dwelling lots shall not encroach upon primary conservation areas, and the layout shall respect secondary conservation areas as identified

in Chapter 300, Subdivision and Land Development.

- (2) Setbacks. All new dwellings shall meet the following setback requirements in Table 400-19E(2):

Table 400-19E(2)

Dwelling Setbacks

Setback from:	Dwelling Type	
	Single-Family and Two-Family	Townhouses
External road rights-of-way	100 feet	300 feet
Other tract boundaries	50 feet	200 feet
Cropland or pasture land	100 feet	
Buildings or barnyards housing livestock	300 feet	

- (3) Exterior views. Views of dwellings from exterior roads and abutting properties shall be minimized by the use of changes in topography, existing vegetation, or additional landscaping which meets the landscaping requirements of Chapter 300, Subdivision and Land Development.
- (4) Dwelling access. Dwellings shall generally be accessed from interior streets, rather than from roads bordering the tract.
- F. Conservation open space use and design standards. Protected conservation open space in all subdivisions shall meet the following standards.
- (1) Uses permitted on conservation open space. The following uses are permitted in conservation open space areas:
- (a) Conservation of open land in its natural state (for example, woodland, fallow field, or managed meadow).
 - (b) Agricultural and horticultural uses, including raising crops or livestock, wholesale nurseries, associated buildings, excluding residences that are specifically needed to support an active viable agricultural or horticultural operation. Specifically excluded are commercial livestock operations involving swine, poultry, mink, and other animals likely to produce highly offensive odors.
 - (c) Pasture land for horses used solely for recreational purposes. Equestrian facilities shall be permitted but may not consume more than half of the minimum required conservation open space.
 - (d) Silviculture in keeping with established standards for selective harvesting and sustained-yield forestry.
 - (e) Neighborhood open space uses, such as village greens, commons, picnic areas, community gardens, trails and similar low-impact passive recreational uses, specifically excluding motorized off-road vehicles, rifle

ranges, and other uses similar in character and potential impact, as determined by the Borough.

- (f) Active noncommercial recreation areas, such as playing fields, playgrounds, courts and bikeways, provided such areas do not consume more than half of the minimum required conservation open space or five acres, whichever is less.
 - (g) Golf courses may comprise up to 1/2 of the minimum required conservation open space but shall not include driving ranges or miniature golf. Their parking areas and any associated structures shall not be included within the minimum conservation open space requirement; their parking and accessways may be paved and lighted.
 - (h) Water supply and sewage disposal systems and stormwater detention areas designed, landscaped and available for use as an integral part of the conservation open space. However, water treatment plants and storage tanks, central sewage treatment plants and lagoons, and a fifty-foot buffer around such facilities shall not be included within the minimum conservation open space requirement.
 - (i) Easements for drainage, access, sewer or water lines, or other public purposes.
 - (j) Underground utility rights-of-way. Aboveground utility and street rights-of-way may traverse conservation areas but shall not count toward the minimum required conservation open space.
- (2) Conservation open space design standards.
- (a) Conservation areas. Conservation open space shall be laid out in general accordance with the Borough's Map of Potential Conservation Lands to ensure that an interconnected network of open space will be provided. The required conservation open space consists of a mixture of primary conservation areas, all of which must be included, and secondary conservation areas. Primary conservation areas comprise those areas listed in § 400-19D(4) as being subtracted from the total parcel acreage to produce the adjusted tract acreage. Secondary conservation areas include special features of the property that would ordinarily be overlooked or ignored during the design process and such features are listed in Chapter 300, Subdivision and Land Development.
 - (b) In Option 1 – basic conservation and Option 2 – greater conservation subdivisions, the conservation open space shall generally remain undivided and may be owned and maintained by a homeowners' association, land trust, another conservation organization recognized by the municipality, or by a private individual or entity. The amount of land available for the common use and passive enjoyment of the subdivision residents shall be provided in accord with Chapter 300, Subdivision and Land Development. These ownership options may be combined so that different parts of the conservation open space may be owned by different entities.

- (c) Dedication requirement. See the open space and recreation fee provisions in Chapter 300, Subdivision and Land Development, which may require public land dedication (typically to provide potential connections with the Borough's long-range trail network).
 - (d) Buffers for adjacent public parkland. Where the proposed development adjoins public park, state forest or state game land, a natural conservation open space buffer at least 150 feet deep shall be provided within the development along its common boundary with such public land, within which no new structures shall be constructed. Where this buffer is unwooded, the Borough may require vegetative screening to be planted or that it be managed to encourage natural forest succession through no-mow policies and the periodic removal of invasive alien plant and tree species.
- (3) Other requirements.
 - (a) No portion of any building lot may be used for meeting the minimum required conservation open space. However, active agricultural land with farm buildings, excluding areas used for residences, may be used to meet the minimum required conservation open space.
 - (b) Pedestrian and maintenance access, excluding to those lands used for permitted agricultural or horticultural purposes, shall be provided to conservation open space in accordance with the following requirements:
 - [1] Each neighborhood shall provide one centrally located access point per 15 lots, a minimum of 35 feet in width.
 - [2] Access to conservation open space used for agriculture may be appropriately restricted for public safety and to prevent interference with agricultural operations.
 - (c) All conservation open space areas that are not wooded or farmed shall be landscaped in accordance with the landscaping requirements of Chapter 300, Subdivision and Land Development.
- G. Permanent conservation open space protection through conservation easements. In Option 1 and 2 subdivisions, the conservation open space that is required to be reserved and created through the subdivision process shall be subject to permanent conservation easements prohibiting future development and defining the range of permitted activities. (For example, the clearing of woodland habitat shall generally be prohibited, except as necessary to create trails, active recreation facilities, and to install subsurface septic disposal systems or spray irrigation facilities. The determination of necessity shall lie with the Borough. Uses permitted in conservation open space are listed in § 400-19E.¹⁰³
- H. Ownership and maintenance of conservation open space and common facilities. See Article X.

103. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 400-20. Two-family dwellings.

Where permitted by the Schedule of Uses, two-family dwellings shall comply with the requirements of this § 400-20 and other applicable standards in this chapter.

- A. Common wall. In cases where a two-family dwelling is a duplex involving a common (i.e., party) wall and common property line, said wall shall be located on the common property line separating the adjoining lots. The area of each lot shall not be less than 50% of the minimum lot size required in the Schedule of Development Standards in Article IV of this chapter, and minimum lot dimensions shall also comply with the Schedule of Development Standards.
- B. Over/under units. In cases where the two-family dwelling consists of two dwelling units constructed with one unit located on the second floor above a first-floor dwelling unit, the lot size shall comply with the Schedule of Development Standards in Article IV of this chapter and minimum lot dimensions shall also comply with the Schedule of Development Standards in Article IV of this chapter. If such a two-family dwelling is proposed on two or more separate lots of record, said lots shall be combined into one lot prior to the issuance of a zoning permit.
- C. Conversions. See § 400-22 of this chapter.

§ 400-21. Multifamily dwellings.

Multifamily projects are permitted in certain districts in accord with the Schedule of Uses in order to provide the opportunity for the development of a variety of housing types in the Borough.

- A. Project design process and procedure.
 - (1) Subdivision and land development. Multifamily projects shall be considered major subdivisions and land developments also subject to Chapter 300, Subdivision and Land Development. This "major subdivision" classification shall apply to all subdivision of property in connection with the development, regardless of whether or not the same are connected with building development, and the approvals required shall be requested and acted upon concurrently as one subdivision.
 - (2) Design process and procedure. All multifamily projects shall be designed and processed in accord with the adjusted tract acreage approach requirements for conservation design developments contained in § 400-19D(4)(a) of this chapter and Chapter 300, Subdivision and Land Development.
 - (3) Site plan. A proposed site plan showing all necessary information, to include, at a minimum, location of all buildings and improvements including roads, parking areas, planting strips, signs, overall grading plan with storm drainage facilities, water supply and distribution systems, sewage treatment and collection systems and the specific areas provided as open space pursuant to the requirements of this chapter. Building layouts, floor plans and profiles shall also be provided, indicating building dimensions; numbers and sizes of units; common ownership or use areas; lighting and such other information as shall be required to determine compliance with the design standards contained

herein; and any other building standards which may be applicable in the Borough. Setbacks from property lines, improvements and other buildings shall also be specifically shown.

- (4) Open space. Open space area shall be preserved to the maximum extent possible in accord with a schedule or plan, and proposed agreement(s), either with the Borough or a property owners' association, for the purpose of preserving the open space in the same manner as required for conservation design developments in § 400-19 of this chapter.
- B. Bulk and density standards; parcel configuration. The bulk and density factors listed on Table 400-21B shall apply to multifamily dwellings and projects without the application of any density bonuses. All land proposed for a particular multifamily dwelling project shall be part of the same parcel and contiguous.

Table 400-21B

Multifamily Dwelling Standards

Project Standards	Townhouses	Garden Apartments	Apartment Buildings
Minimum size for project parcel (acres)	1	1	1
Density – square feet of usable land per dwelling unit	10,000	7,500	5,000
(See § 400-19D(4)(a) for adjusted tract acreage)			
Maximum number of dwelling units per building	6	8	12
Maximum building height (feet)	35	35	35
Maximum lot coverage of project parcel (percent)	50%	60%	75%

Additional Townhouse Standards

Minimum lot size for townhouse units for individual sale	1,000 square feet
Minimum lot width at house location	18 feet
Minimum front and rear yard setback	10 feet front/15 feet rear
Minimum side yard setback for end unit	15 feet
Maximum lot coverage for individual townhouse parcels	75%

- C. Design criteria. The following design criteria shall apply to multifamily projects:
- (1) Setbacks. No structure in a multifamily dwelling project shall be constructed within 20 feet of the edge of the shoulder of any access drive to or through the development or within 10 feet of any parking area. Setbacks of multifamily project buildings from access roads through the project shall meet these

minimums; however, setbacks of adjacent buildings shall be varied so that adjacent buildings have a setback variation of not less than five feet. A setback of 25 feet for any structure shall be maintained from all existing or proposed public or private road rights-of-way and the boundary line of the entire project parcel.

- (2) Road standards. Access roads through the development shall comply with the street requirements of Chapter 300, Subdivision and Land Development, for minor roads. Access drives serving 12 units or less shall be considered driveways and need not meet minor road standards. Direct access of individual parking spaces to a minor road shall not be permitted, and any such access drive shall remain private.
- (3) Building separation. All principal multifamily structures shall be separated by a distance as may be required by any applicable building code, but in no case less than 20 feet.
- (4) Landscaped buffers. Buffers not less than 15 feet in width shall be provided in accord with § 400-29A of this chapter where multifamily structures adjoin existing one-family dwellings, two-family dwellings or any R-R, R-1 or R-2 District. In all cases, a landscaping plan shall be prepared and submitted by the developer for approval by the Borough.
- (5) Pedestrian access. Walkways of such design and construction as approved by the Borough shall be provided from all buildings and/or units to their respective parking area and shall meet the requirements for sidewalks as set forth in Chapter 300, Subdivision and Land Development.
- (6) Trash storage. Exterior storage areas for trash and rubbish shall be screened from public view on three sides and shall be contained in covered, verminproof containers. Interior storage areas for trash shall at all times be kept in an orderly and sanitary fashion.
- (7) Architectural renderings. Preliminary architectural renderings, models or photos for multifamily dwelling units shall be provided at the time of submission of the conditional use application. The exterior appearance of the building(s) shall be unified in type, design and exterior wall treatment, and so constructed and maintained, in order to retain the residential character of the neighborhood. Fire escapes, when required, shall be in the rear of the building and shall not be located on any wall facing a street unless any building, fire or other code so requires.
- (8) Townhouses; facade changes. A minimum of two changes in the front wall plane with a minimum offset of four feet shall be provided for every attached grouping of townhouses in one building. This can be met by varying setbacks among different dwellings or varying setbacks along the front of a dwelling or dwellings set back farther than attached private garages.
- (9) Parking. Parking for multifamily dwelling projects shall comply with § 400-18E(4) of this chapter.¹⁰⁴

104.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- D. Nonresidential use. Nonresidential uses and home occupations which employ other than unit residents shall not be permitted in a multifamily dwelling. Such ancillary facilities as laundry areas, service buildings, recreational facilities and the like for the use of the residents of the project shall be permitted.
- E. Conversions of existing structures. Conversions of any existing structures to multifamily dwelling use, regardless of whether such conversions involve structural alteration, shall be subject to the provisions of this § 400-21, including but not limited to § 400-21B. (See also § 400-22).
- F. Common property ownership and maintenance. In cases where the ownership of common property is involved, evidence of arrangements for the continuous ownership and maintenance of same shall be provided by the developer for approval by the Borough in accord with Article X of this chapter. The developer shall also submit evidence of compliance with the Pennsylvania Condominium Law¹⁰⁵ or an attorney's opinion that said law does not apply to the subject project.
- G. Water supply and sewage disposal. All multifamily dwelling projects shall be served by a community water supply and a community sewage disposal system.

§ 400-22. Conversion to dwellings.

Any conversion of any building to a residential use or the conversion of any dwelling to accommodate additional dwelling units shall comply with the standards in this § 400-22 and the other requirements applicable to the dwelling type to which conversion is proposed. The conversion of any building into a dwelling or the conversion of any dwelling so as to accommodate an increased number of dwelling units or families shall be permitted only within a district in which a new building for similar occupancy would be permitted under this chapter and only when the resulting occupancy will comply with the requirements governing new construction in such district with respect to dwelling unit, living space, lot coverage, dimensions of yards and other open spaces, off-street parking, and other applicable standards.

§ 400-23. Group homes.

Group homes shall be permitted in any lawful single-family dwelling unit in accord with the Schedule of Uses, this § 400-23 and other applicable standards of this chapter.

- A. Definition. See definition in Article III.
- B. Supervision. There shall be adequate supervision as needed by an adequate number of person(s) trained in the field for which the group home is intended.
- C. Certification. The use shall be licensed or certified under an applicable state, county or federal program for group housing, if applicable. A copy of any such license or certification shall be filed with the Borough, and shall be required to be shown to the Zoning Officer in the future upon request. The group home shall notify the Borough within 14 days if there is a change in the type of clients, the sponsoring agency, the maximum number of residents or if an applicable certification/license expires, is suspended or is withdrawn.

105.Editor's Note: See 68 Pa.C.S.A. § 3101 et seq., the Uniform Condominium Act (July 2, 1980, P.L. 286, No. 82).

- D. Registration. The group home shall register its location, general type of treatment/care, maximum number of residents, and sponsoring agency with the Zoning Officer. Such information shall be available for public review upon request.
- E. Counseling. Any medical or counseling services provided on the lot shall be limited to residents and a maximum of three nonresidents per day.
- F. Parking. One off-street parking space shall be provided for each employee on duty at any one time and every two residents of a type reasonably expected to be capable of driving a vehicle. Off-street parking areas of more than five spaces shall be buffered from adjacent existing single-family dwellings by a planting screen meeting the requirements of § 400-29A of this chapter.
- G. Appearance. If the group home is within a residential district, the building shall be maintained and/or constructed to ensure that it is closely similar in appearance, condition and character to the other residential structures in the area. No exterior signs shall identify the type of use.
- H. Bulk and density. The construction of new group homes shall comply with the minimum lot size and other bulk and density requirements applicable to single-family residential dwellings.
- I. Number of residents. The following maximum number of persons shall reside in a group home, including the maximum number of employees/supervisors and/or care providers routinely in the group home at any point in time:
 - (1) With the lot area and setbacks meeting the requirements of the district: eight persons including staff.
 - (2) Any other lawful dwelling unit: six persons including staff.

§ 400-24. Mobile home parks.

Mobile home parks are permitted in certain districts in accord with the Schedule of Uses in order to provide the opportunity for the development of a variety of housing types in the Borough.

- A. Project design process and procedure.
 - (1) Subdivision and land development. Mobile home parks shall be considered major subdivisions and land developments also subject to Chapter 300, Subdivision and Land Development. This "major subdivision" classification shall apply to all subdivision of property in connection with the development, regardless of whether or not the same are connected with building development or home placement, and the approvals required shall be requested and acted upon concurrently as one subdivision.
 - (2) Design process and procedure. All mobile home parks shall be designed and processed in accord with the requirements for open land developments contained in § 400-19 of this chapter.
 - (3) Site plan. A proposed site plan showing all necessary information, to include, at a minimum, location of all mobile home sites, buildings and improvements

including roads, parking areas, planting strips, signs, overall grading plan with storm drainage facilities, water supply and distribution systems, sewage treatment and collection systems and the specific areas provided as open space pursuant to the requirements of this chapter. Building layouts, floor plans and profiles shall also be provided, indicating building dimensions; numbers and sizes of units; common ownership or use areas; lighting and such other information as shall be required to determine compliance with the design standards contained herein; and any other standards which may be applicable in the Borough. Setbacks from property lines, improvements and other buildings shall also be specifically shown.

- (4) Open space. Open space area shall be preserved to the maximum extent possible in accord with a schedule or plan and proposed agreement(s), either with the Borough or a property owners' association, for the purpose of preserving the open space in the same manner as required for open land development in § 400-19E of this chapter.

B. Design; procedures; parcel size; density; mobile home sites.

- (1) All mobile home parks shall be designed and processed in accord with the procedure for open land developments in accord with § 400-19D(2) of this chapter using the density factors in this § 400-24B without the application of any density bonuses.
- (2) All land proposed for a particular mobile home park shall be part of the same parcel and contiguous.
- (3) The minimum parcel size for a mobile home park shall be two acres, and the overall density of a mobile home park shall not exceed one unit per 10,000 square feet of adjusted tract acreage. (See § 400-19D(4)(a) for adjusted tract acreage.)
- (4) Each mobile home site shall have a minimum area of 5,000 square feet for exclusive use of the occupants of the mobile home placed upon the lot. Minimum lot widths and depths shall be 45 feet. Each mobile home lot shall be defined by metes and bounds on a survey and shall be shown as such on the development plan, and markers shall be installed at each corner of every lot.

§ 400-25. Mobile homes on individual lots.

Mobile homes placed on lots not in a mobile home park shall comply with all Borough regulations applicable to single-family residential dwellings; and:

- A. Shall be constructed in accordance with the safety and construction standards of the United States Department of Housing and Urban Development. These standards supersede the BOCA Code for the actual construction of the unit itself.
- B. Shall have a site graded to provide a stable and well-drained area.
- C. Shall have the hitch mechanisms, wheels and axles removed or screened from view.
- D. Shall be securely attached to a permanent foundation set below the frost line in such a way as to prevent overturning, shifting or uneven settling of the home.

- E. Shall be enclosed from the bottom of the home to the ground or stand, using industry-approved skirting material compatible with the home, or if a slab foundation is used, masonry walls underneath the home with soil backfill to result in the surrounding ground level being flush or one normal step height below the first-floor elevation. If masonry walls are used, then an appropriate service access area shall be provided.

§ 400-26. Bed-and-breakfast establishments.

Bed-and-breakfast establishments are considered conditional uses in certain districts as set forth in the Schedule of Uses and shall comply with the following standards in addition to all other applicable standards in this chapter:

- A. Adequate off-street parking is provided in accord with this chapter with the minimum number of parking spaces provided as follows: one space for each rentable room; one space for each nonresident employee; and two spaces for the dwelling unit.
- B. Not more than the following rentable rooms are provided in the establishment: five in R-2 and 10 in other districts where permitted.
- C. The owner or manager of the bed-and-breakfast must reside on the premises.
- D. Sewage disposal meeting the requirements of the Borough and PA DEP is provided.
- E. Bed-and-breakfast establishments shall not be permitted on lots which are nonconforming in minimum area.

§ 400-27. Hotels, motels and lodging facilities.

This section is intended to provide specific standards for the development of hotels, motels and other lodging facilities at unit densities that allow full use of the project parcel while at the same time recognizing the limitation of the proposed site. Specific performance standards are provided to allow for flexibility of design and to ensure the protection of adjoining properties and the public health, safety and general welfare.

- A. Density. Density of units and facilities shall be determined by the character of the project parcel and compliance with the standards in this § 400-27 and this chapter, and other applicable Borough regulations, but in no case shall exceed 10 units per acre.
- B. Design criteria.
 - (1) Yard, building height, lot width and depth, and lot coverage ratios applicable to the district shall be maintained.
 - (2) All facilities in a hotel, motel or lodging facility project shall be on the same parcel of property and shall not contain any commercial facility unless such commercial facility is otherwise permitted in the district where the subject property is located.

ARTICLE VII
Performance Standards and Environmental Protection

§ 400-28. Design of commercial establishments and nonresidential uses.

- A. It is the intent of this § 400-28 to provide standards for the design of commercial establishments and nonresidential uses (referred to as commercial establishments) to assure the compatibility of the nonresidential development with the surrounding character of the Borough. This shall be accomplished by:
- (1) Siting buildings, parking areas and other facilities and improvements based upon the particular topography of development site;
 - (2) Designing buildings with consideration of architectural style and type of construction material in keeping with the surrounding landscape and development pattern, using wood or wood-like siding (exposed cinder-block construction shall not be permitted);
 - (3) Providing safe and convenient access from the public right-of-way based on the existing area-wide traffic circulation pattern and the expected traffic generated by the proposed use;
 - (4) Designing parking areas to complement patterns of traffic flow and to provide adequate off-street parking for shopping center patrons;
 - (5) Maintaining to the greatest extent possible natural vegetation and provide landscaping as an integral part of the overall design of the proposed use and parking areas;
 - (6) Considering the impact of stormwater, noise, traffic and lighting on surrounding land uses and providing buffers to minimize adverse impacts; and
 - (7) Being consistent with any design guidelines adopted by the Borough.
- B. Land development. Any proposed commercial establishment shall be considered a "land development" as defined by the Pennsylvania Municipalities Planning Code¹⁰⁶ and Chapter 300, Subdivision and Land Development, and shall comply in all respects with all the requirements for plan submission and content for land developments contained therein, as well as the information which follows. The Borough may also require any additional information, studies or reports as it deems necessary to meet the intent of this and other Borough ordinances.
- (1) Location, widths and names of all existing or prior platted streets and utility rights-of-way, parks and other public open spaces, permanent buildings and structures, houses or permanent easements, and zoning and municipal boundary lines within 500 feet of the tract;
 - (2) A traffic flow chart showing circulation patterns from the public right-of-way and within the confines of the shopping center.
 - (3) Location and dimensions of vehicular drives, entrances, exits, acceleration and

106.Editor's Note: See 53 P.S. § 10101 et seq.

deceleration lanes;

- (4) Location, arrangement and dimensions of automobile parking space, width of aisles, width of bays, angle of parking;
 - (5) Location, arrangement and dimensions of truck loading and unloading spaces and docks;
 - (6) Location and dimensions of pedestrian entrances, exits, walks;
 - (7) Location, height and materials of walls, fences, screen plantings, and other landscaped areas.
 - (8) Preliminary architectural drawings for all buildings;
 - (9) Location, size, height and orientation of all signs other than signs flat on building facades.
- C. Site design process. The applicant shall demonstrate to the Borough, by the submission of the necessary land development site plans, that the commercial establishment has been designed as follows:
- (1) Mapping of conservation areas [see § 400-19D(4)(a)] to identify all areas of the site which will remain undisturbed, along with noting site development practices which will be used to assure nondisturbance.
 - (2) Locating the building site.
 - (3) Locating required buffers.
 - (4) Laying out street access, parking/loading areas, and other required or proposed improvements.
- D. Ownership. The site proposed for any multiple-occupant commercial establishment shall be held in single ownership or in unified control, and the applicant shall provide to the Borough evidence of said ownership and/or control.

§ 400-29. Performance standards applicable to all uses in all districts.

The intent of this § 400-29 is to regulate the development and operation of all development in the Borough and to protect the environment and the public health, safety and general welfare. No land or building shall be used or occupied in such manner which creates any dangerous, injurious, noxious or otherwise objectionable condition in such amount to adversely affect the surrounding area, and any such activity is hereby declared to be a public nuisance. However, any use permitted by this chapter may be undertaken and maintained if it conforms to all applicable requirements of this chapter, including the standards in this § 400-29 which are intended to limit nuisance elements. The following performance standards shall apply to all proposed new or expanded nonresidential uses and residential uses explicitly referenced by a specific section.

A. Yards and buffers.

- (1) Unless otherwise regulated by this chapter, where a commercial or manufacturing use is proposed contiguous to any R-1 or R-2 District or any

existing residential structure not in the R-R District, the minimum size of the abutting yard shall be increased by 50%, and a landscaped buffer not less than five feet in width in the C-1 District and 10 feet in width in other districts shall be provided in accord with this § 400-29A. Storage of equipment, supplies, products or any other materials shall not be permitted in any front yard or side yard.

- (2) In the case of conditional uses and special exceptions, landscaped buffers may be required by the Borough in any yard in order to assure the protection of adjoining uses by providing visual barriers that block the glare of lights; reduce noise; serve as a protective barrier by blocking physical passage to dangerous areas; reduce air pollution, dust and litter; and to otherwise maintain and protect the rural character of the district.
 - (a) In determining the type and extent of the buffer required, the Borough shall take into consideration the design of the project structure(s) and site; topographic features which may provide natural buffering; existing natural vegetation; and the relationship of the proposed project to adjoining areas.
 - (b) Additional buffer width may be required for conditional uses and special exceptions.
 - (c) A mix of ground cover and shrubby vegetation and canopy trees, of such variety compatible with the local climate, may be required so that a dense screen not less than six feet in height will be formed within three years of planting.
 - (d) Berms and landscaped walls or fences compatible with the principal building design may be incorporated in the required buffer. Front-yard buffers shall be provided in the same manner to a height of not less than four feet; however, all clear sight triangles shall be maintained.
 - (e) In any case, special consideration shall be given to existing residential uses and sites where residential uses are likely to be developed. In cases where the adjoining use is a commercial use or when two or more adjacent properties are developed under a common site plan, the width and density of the buffer may be reduced if the Borough shall determine that the proposed use and adjoining use(s) are not incompatible.
 - (f) Design details of buffers shall be included on the site plan, and buffers shall be considered "improvements" for the purposes of guaranteeing installation in accord with the requirements for land developments in Chapter 300, Subdivision and Land Development. It shall be the responsibility of the property owner to maintain all buffers in good condition and replace any dying or dead plants or deteriorating landscape material.
- B. Landscaping. A landscaping plan for the proposed project shall be prepared by the developer for review and approval by the Borough. Landscaping shall be considered an improvement for the purposes of regulation by Chapter 300, Subdivision and Land Development. The landscaping plan shall include the overall

design of the landscaping proposed, the type and size of vegetation to be utilized, and details of installation. Landscaping shall be installed to the following minimum standards:

- (1) All disturbed areas of the site shall be included in the landscaping plan, and those areas immediately adjacent to buildings and walkways shall be given extra consideration.
- (2) Adequate pedestrian walkways shall be provided for access from parking areas and to common use areas and shall be an integral part of the landscaping, and shall be consistent with the architectural type of the project, and shall be a minimum of four feet in width.
- (3) Plants shall be of a type which are proven successful in the Borough's climate.
- (4) Where landscaping is required to serve as a buffer (e.g., between the project and adjoining properties or between buildings and parking areas), the plants used shall be of the evergreen type and of adequate size to provide an effective buffer within a reasonable number of years.
- (5) The variety of landscape materials shall be consistent with building architecture and the surrounding area, and plant type shall be appropriate for the size and location of the space it is to occupy.
- (6) All unusable areas in and around parking areas shall be landscaped.
- (7) Attractive natural features of the site, including mature trees, shall be preserved to the greatest extent possible.
- (8) Plastic landscape materials shall not be used in place of live trees, shrubs, ground cover or other vegetation.
- (9) All trees to be planted shall have a trunk diameter of at least two inches as measured one foot above the ground.
- (10) Ground cover shall be spaced to allow for complete fill-in within one year of the date of planting.
- (11) Adequate soil preparation in accord with accepted landscape industry practices shall be required.
- (12) All landscaping shall be maintained in good growing condition by the property owner.

C. Operations and storage.

- (1) All facilities and operations of any principal use, including the storage of raw material, finished products, fuel, machinery and equipment and any other materials or supplies, shall be enclosed and carried out within a building or shall, as required by the Borough for conditional uses and special exceptions, be provided with larger setbacks and/or buffers to afford protection to adjoining uses and any public road rights-of-way. Unenclosed uses and activities shall, in any case, be a minimum of 100 feet from any existing residential structure or any R-R, R-1 or R-2 District, unless a greater setback

is required by the Borough. Storage of equipment, supplies, products or any other materials shall not be permitted in any front yard or side yard.

- (2) Storage of materials, supplies or products in motor vehicles, truck trailers or other containers normally used to transport materials shall not be permitted. Trailers, painted one color without advertising and maintained in good condition, may be used as accessory structures, provided all wheels and axles are removed; the trailers are erected and maintained as structures and are screened from view from adjoining properties in accord with § 400-29A of this chapter. Trailers, painted one color without advertising and maintained in good condition, shall be permitted for storage for a temporary period on the site of an ongoing construction project. The placement of said trailers shall be for a specified time as stated in the required permit from the Borough; shall meet the setback requirements of this chapter; and shall not be used for the storage of any flammable or hazardous material except in accord with applicable state and federal regulations.
- D. Fire and explosion hazards. All activities involving any manufacturing, production, storage, transfer or disposal of inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion, and adequate firefighting and fire-suppression equipment and devices standard in the industry shall be required. Burning of waste materials in open fires is prohibited. The relevant provisions of federal, state and local laws and regulations shall also apply. Details of the potential hazards and details of planned safety and accident response actions shall be provided by the developer for review by the local fire company(ies). In the case of conditional uses and special exceptions, larger setbacks, additional buffer areas or fencing may be required by the Borough if the nature of the proposed use, as determined by the Borough, so requires.
- E. Radioactivity or electric disturbance. No activities shall be permitted which emit dangerous radioactivity, electrical disturbance or electromagnetic radiation adversely affecting the operation of any person or any equipment other than that of the creator of such disturbance. All applicable federal regulations shall apply.
- F. Noise.
 - (1) Maximum permissible sound levels.
 - (a) No person shall operate or cause to be operated on property any source of continuous sound (any sound that is steady, fluctuating or intermittent with a recurrence greater than one time in any fifteen-second interval) in such a manner as to create a sound level that exceeds the limits set forth for the receiving land use category in the following Maximum Sound Levels Table when measured at the property line of the receiving land use.

Maximum Sound Levels

Period	Category Limits (dBA)		
	Commercial	Manufacturing	All Others
Monday to Saturday, 7:00 a.m. to 9:00 p.m.	65	70	60
Saturday, 9:00 p.m. to Monday, 7:00 a.m.	60	70	50
Monday to Friday, 9:00 p.m. to 7:00 a.m.			
Legal holidays, 12:00 Midnight to 12:00 Noon			

- (b) The maximum sound levels listed in the Maximum Sound Levels Table above do not apply to the following noise sources:

- [1] Emergency alerts.
- [2] Emergency work to provide electricity, water or other public utilities when public health or safety is involved.
- [3] Snow removal or road repair.
- [4] Domestic power tools between 8:00 a.m. and 9:00 p.m.
- [5] Explosives and construction operations between 7:00 a.m. and 6:00 p.m., Monday through Saturday.
- [6] Agriculture and forestry operations between 6:00 a.m. and 9:00 p.m.
- [7] The operation of legally registered and inspected motor vehicles designed for use on public highways.
- [8] Public celebrations authorized by the Borough.
- [9] Railroads.
- [10] The unamplified human voice.
- [11] Outdoor sports or entertainment activities approved by the Borough.

- (2) For any source that emits a pure tone, the maximum sound level limits in the table above shall be reduced by five dBA. For any source that emits an impulsive sound (a sound of short duration, with an abrupt onset and rapid decay and an occurrence of not more than one time in any fifteen-second interval), the excursions of sound pressure level shall not exceed 20 dBA over the ambient sound pressure level, regardless of time of day or night or receiving land use using the fast meter characteristic of a Type II meter, meeting the ANSI specification SI.4-1971, as amended.

- G. Vibration. No vibration shall be permitted which is detectable without instruments at or beyond the property line, and no use shall generate any vibration which is

capable of causing damage to buildings, structures, equipment alignment or structural soundness. This requirement shall not apply to occasional blasting conducted in accord with applicable regulations that may be necessary during construction of streets, structure and utilities.

H. Lighting and glare. The standards of this § 400-29H shall apply to all uses, including residential and agricultural.¹⁰⁷

(1) Purpose. The standard established in this section sets forth criteria to require and set minimum standards for outdoor lighting to:

- (a) Provide lighting in outdoor public places where public health, safety and welfare are potential concerns.
- (b) Protect drivers and pedestrians from the glare of nonvehicular light sources that shine into their eyes and thereby impair safe traverse.
- (c) To protect the privacy of property owners by limiting the potential for glare and light trespass from poorly aimed, placed, applied, maintained or shielded outdoor lighting installations located on adjacent properties and roadways.
- (d) To set forth outdoor lighting requirements which are consistent with lighting industry standards and practices, available technologies, and the lighting sciences.

(2) Application. Outdoor lighting shall be required for safety and personal security in areas of public assembly and traverse, including but not limited to multiple-family dwelling unit, commercial, industrial, public recreational and institutional uses. The Board of Supervisors may require lighting to be incorporated for other uses or locations, as it deems necessary. The glare-control requirements in this section apply to lighting in all above-mentioned uses as well as sign, architectural, landscaping and residential lighting. Lighting shall be controlled in both height and intensity to maintain community character, and lighting designs shall be an inherent part of the project design. The standards of the Illuminating Engineering Society (IES) shall be used as a guideline for the said design. The applicant shall provide the specifications of the proposed lighting and its arrangement on the site, and all required lighting shall be considered improvements for the purpose of regulation by Chapter 300, Subdivision and Land Development.

(3) Definitions. As used in this section, the following terms shall have the meanings indicated:

CANDELA — Unit of luminous intensity, describing the intensity of a light source in a specific direction.

CANDELA DISTRIBUTION — A curve, often on polar coordinates, illustrating the variation of luminous intensity of a lamp or luminaire in a plane through the light center.

107.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

CANDLEPOWER — Luminous intensity expressed in candelas A measure of luminous intensity of a light source in a specific direction, measured in candelas.

CUTOFF — A light distribution where a negligible amount of light is permitted at a horizontal plane located at the bottom of a luminaire. Light above the horizontal plane at the bottom of a luminaire is not limited, but cutoff luminaires usually have very little light above the luminaire.

- (a) **FULL CUTOFF** — A light distribution where no light is permitted at or above a horizontal plane located at the bottom of a luminaire. There will be little or no light at the angles that are usually associated with glare.
- (b) **SEMICUTOFF** — A light distribution where slightly more light is permitted at a horizontal plane located at the bottom of a luminaire than the cutoff distribution. Like cutoff, light above the horizontal plane at the bottom of a luminaire is not limited, but the amount of light above the luminaire is relatively small.
- (c) **NONCUTOFF** — A light distribution that can produce considerable light above the horizontal plane located at the bottom of a luminaire.
- (d) **CUTOFF ANGLE (OF A LUMINAIRE)** — The angle, measured up from the nadir (i.e., straight down), between the vertical axis and the first line of sight at which the bare source (the bulb or lamp) is not visible.

FLOODLIGHT — A fixture designed to "flood" a well-defined area with light.

FOOTCANDLE — A unit of illuminance. The English measurement unit of illuminance (or light level) on a surface. One lumen is equal to one footcandle per square foot. A unit of light intensity stated in lumens per square foot and measurable with an illuminance meter; aka, footcandle or light meter. One footcandle is equal to 10.76 lux; one lux is equal to 0.093 footcandle.

FULLY SHIELDED LIGHT FIXTURE — A light fixture constructed in such a manner that all light emitted by the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizon.

GLARE — Light that hinders or bothers the human eye. The sensation produced by luminances within the visual field that is sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort or loss in visual performance or visibility. The degree of glare is described as such:

- (a) **BLINDING GLARE** — Glare that is so intense that, for an appreciable length of time after it has been removed, no object can be seen.
- (b) **DIRECT GLARE** — Glare resulting from high luminances or insufficiently shielded light sources in the field of view.
- (c) **DISABILITY GLARE** — The effects of stray light in the eye whereby visibility and visual performance is significant enough to keep a person

from seeing adequately.

- (d) **DISCOMFORT GLARE** — Glare that produces discomfort. It does not necessarily interfere with visual performance or visibility.
- (e) **REFLECTED GLARE** — Glare resulting from reflections of high luminances in polished or glossy surfaces in the field of view.

ILLUMINANCE — The quantity of light measured in footcandles or lux. A term that quantifies light striking a surface or a plane point. It is expressed either in lumens per square foot (footcandles/the English unit) or lumens per square meter (lux/the metric unit). The areal density of the luminous flux incident at a point on a surface. One footcandle is equal to 10.76 lux; one lux is equal to 0.093 footcandles.

ILLUMINATION — An alternative term for "illuminance." Commonly used in a qualitative or general sense to designate the act of illuminating or the state of being illuminated.

LAMP — A generic term for a man-made source of light.

LIGHT — Radiant energy that is capable of exciting the retina and producing a visual sensation. The visible portion of the electromagnetic spectrum extends from about 380 to 770 nanometers.

LIGHT TRESPASS — Light emitted by a lighting installation which extends beyond the boundaries of the property on which the installation is sited; spill light; obtrusive light; undesirable illumination, including the following examples:

- (a) The classic "light shining in a window."
- (b) Unwanted light on an adjacent property.
- (c) Excessive brightness in the normal field of vision (discomfort glare).

LUMEN — Unit of measurement of luminous flux representing the quantity of light being produced by a lamp or emitted from a luminaire.

LUMINAIRE — A complete lighting unit consisting of one or more lamps (light sources), together with the parts designed to control the light distribution and other mechanical and electrical components.

LUMINANCE — A term that quantifies directional brightness of a light source (e.g., a lamp, luminaire, reflecting material) or of a surface that is illuminated and reflects light. The emitted or reflected light from a surface relates directly to perceived "brightness." The unit of luminance is the candela per square meter (cd/m^2). Measurable with a luminance meter.

LUX — A unit of light intensity stated in lumens per square meter. There are approximately 10.76 lux per footcandle.

NADIR — The point directly below the luminaire when the luminaire is pointed down (zero-degree angle).

NIGHTTIME — The hours between the end of evening civil twilight and the beginning of morning civil twilight. Civil twilight ends in the evening when

the center of the sun's disk is 6° below the horizon and begins in the morning when the center of the sun's disk is 6° below the horizon.

SPOTLIGHT — A fixture designed to light only a small, well-defined area.

(4) Criteria.

(a) Illumination levels for nonresidential uses. Illumination of nonresidential uses, where required by this chapter, shall have intensities and uniformity ratios in accordance with the most current recommended practices of the Illuminating Engineering Society of North America (IESNA) Lighting Handbook, from which typical uses are presented in the following table.

(b) Outdoor light standards for all uses.

[1] Any lamp over 2,000 initial lumens installed shall be fully shielded such that the lamp itself is not directly visible from any other residential property.

[2] The use of more than one luminaire or lamp of 2,000 initial lumens for the purpose of illuminating the same area shall not be permitted.

[3] Examples of lamp types of 2,000 lumens and below are 100-watt standard incandescent; 15-watt cool white fluorescent; 15-watt compact fluorescent; 18-watt low-pressure sodium.

(5) Lighting fixture design.

(a) Fixtures shall be of a type and design appropriate to the lighting application.

(b) For lighting horizontal tasks such as roadways, sidewalks, entrances and parking areas, fixtures shall meet full cutoff criteria (no light output emitted above 90° at any lateral angle around the fixture).

(c) Fixtures shall be equipped with or be modified to incorporate light-directing and/or -shielding devices such as shields, visors, skirts or hoods to redirect offending light distribution and/or reduce direct or reflected glare.

(6) Control of nuisance and disabling glare.

(a) All outdoor lighting shall be aimed, located, designed, fitted and maintained so as not to present a hazard to drivers or pedestrians by impairing their ability to safely traverse and so as not to create a nuisance by projecting or reflecting objectionable light onto a neighboring use or property.

(b) All outdoor lighting fixtures shall be fully shielded in such a manner that no light is emitted above a horizontal plane passing through the lowest point of the light-emitting element, so that direct light emitted above the horizontal plane is eliminated.

(c) Floodlights and spotlights shall be so installed or aimed that they do not

project their output into the windows of neighboring residences, adjacent uses, skyward or onto a public roadway. Floodlights or spotlights must be aimed no higher than 45° above straight down (halfway between straight down and straight to the side) when the source is visible from any off-site residential property or public roadway. The use of searchlights or laser source lights for advertising or entertainment purposes is prohibited.

- (d) To mitigate nuisance glare and sky-lighting consequences, automatic switching devices such as time clocks or combination motion detectors and photocells, to permit the extinguishing of outdoor lighting fixtures, is preferable.
 - (e) All illumination for advertising signs, buildings and/or surrounding landscapes for decorative, advertising or aesthetic purposes is prohibited between 11:00 p.m. and sunrise, except that such lighting situated on the premises of a commercial establishment may remain illuminated while the establishment is actually open for business and until one hour after closing.
 - (f) Illumination for flagpole lighting may not exceed 10,000 lumens.
 - (g) Vegetation screens shall not be employed to serve as the primary means for controlling glare. Rather, glare control shall be achieved primarily through the use of such means as cutoff fixtures, shields and baffles, and appropriate application of fixture-mounting height, wattage, aiming angle and fixture placement.
 - (h) Externally illuminated signs and billboards shall use only fixtures mounted at the top of the sign and aimed downward. Such fixtures shall be automatically extinguished between the hours of 11:00 p.m. and dawn except as specifically approved by appropriate officers or agents of the Borough.
 - (i) Directional fixtures for such applications as facade, fountain, feature and landscape illumination shall be aimed downward so as not to project their output beyond the objects intended to be illuminated. Additionally, they shall be extinguished between the hours of 11:00 p.m. and dawn.
 - (j) The use of white strobe lighting, flashing, flickering or pulsating for tall structures such as smokestacks, chimneys and radio/communications/television towers is prohibited during nighttime hours, except as may be required by the Federal Aviation Administration or other governmental agency.
- (7) Nonconforming lighting. Any lighting fixture or lighting installation existing on the effective date of this chapter that does not conform with the requirements of this chapter shall be considered as a lawful nonconformance, subject to the following:
- (a) Unless minor corrective action is deemed by the Borough to be an acceptable alternative, a nonconforming lighting fixture or lighting installation shall be made to conform with the applicable requirements of

this chapter, when:

[1] It is deemed by the Borough to create a safety hazard.

[2] It is replaced, abandoned or relocated.

[3] There is a change in use.

(b) Nonconforming lighting fixtures and lighting installations shall be made to conform with the requirements of this chapter or removed within seven years after the effective date of this chapter.

(8) Exemptions.

(a) Emergency lighting, used by police, firefighting or medical personnel, or at their direction, is exempt from all requirements of this code for as long as the emergency exists.

(b) Temporary lighting installations, which include but are not limited to, seasonal or holiday displays, carnivals, community fairs, traveling circuses, may be employed on a temporary basis not to exceed 30 days in duration.

I. Smoke. Smoke, fumes, gas, dust or any other atmospheric pollutant not in compliance with PA DEP requirements.

J. Odors. No emission shall be permitted of odorous gases or other odorous matter not in compliance with PA DEP requirements.

K. Surface water and groundwater protection. All activities involving the possible contamination of surface water or groundwater shall be provided with adequate safety devices to prevent such contamination. In cases where any earth disturbance will result in the excavation of bedrock, the Borough may require the applicant to submit a report from a qualified engineer or geologist detailing the geologic structure of the area proposed to be disturbed and identifying the probable impacts on groundwater supply and quality. Details of the potential hazards (including the groundwater characteristics of the area in which the use is proposed) and details of planned safety devices and contamination response actions shall be provided by the developer. The Borough may require a plan to be submitted for review and approval and may require security for ensuring contamination response. Monitoring wells and water quality testing may also be required by the Borough. The developer shall also provide details about the use of groundwater and any processes that could result in the depletion of groundwater supplies. No use shall be permitted which would result in the depletion of groundwater supplies. In cases where the use is of such a nature that large volumes of groundwater are required, the developer shall provide appropriate hydrogeologic studies which clearly establish that the proposed use will not cause a reduction in the quantity or the quality of groundwater supplies available to other properties located within 1,000 feet of any portion of the property where the proposed use will be located.

L. Stormwater management and soil erosion control.

(1) A stormwater management plan and soil erosion control plan may be required

for review and approval. Said plan shall be prepared and implemented pursuant to the standards contained in Chapter 300, Subdivision and Land Development, or other applicable Borough regulations and County Conservation District standards, and shall be based on generally accepted engineering principles appropriate for the proposed use.

- (2) The protection of the quality of groundwater and surface water shall be an integral part of all proposed stormwater management practices, and all stormwater management plans shall include an element specifically addressing water quality. The plan shall provide for the minimization of the discharge of "first flush" sediments off the project site or directly to infiltration structures. Containment of "first flush" sediments shall be accomplished by accepted and proven engineering design and practice, including but not limited to the use of grass buffer/filter strips, grass swales, detention basins, sediment traps, and special inlet devices.
 - (3) In any area of the Borough where a stormwater management plan has been prepared and adopted in accord with the Pennsylvania Storm Water Management Act,¹⁰⁸ the provisions of any applicable stormwater control ordinance shall apply.
- M. Waste materials. No liquid, solid, toxic or hazardous waste shall be stored or disposed in any commercial area, either above or below ground level, except for the temporary storage thereof pending removal from the premises. Such temporary storage and handling of waste shall be in a designated area and shall be conducted in compliance with all applicable state and federal regulations in order to prevent any water, soil or air contamination and shall be screened from view of adjoining properties and any public road right-of-way by fencing or other buffers. In addition, no waste discharge is permitted into any reservoir, sewage or stormwater disposal system, stream, open body of water or onto the ground. All waste materials shall be disposed of only in accord with all applicable state and federal regulations, and applications for any use which results in waste materials regulated by the state or federal government shall include a list of all such wastes and the method of temporary storage, handling and disposal.
- N. Handicapped access. Access for handicapped persons to all uses shall be provided in accord with all applicable state and federal requirements.
- O. Settling and/or storage ponds and reservoirs. All ponds, reservoirs or other such structures which are associated with any manufacturing or industrial process, any sewage or waste disposal process, or an agricultural manure management operation shall be fenced or shall otherwise be physically controlled to prevent access by the public. Said fence shall be not less than four feet high and of a design to restrict access to the area to be controlled. Any such structure which contains any material which is poisonous, toxic or caustic shall be considered a conditional use, and the Borough Council shall, at a minimum, require that such structure be enclosed by a chain-link fence not less than eight feet high.
- P. Security. In cases where deemed necessary by the Borough (detention facilities and

108. Editor's Note: See 32 P.S. § 680.1 et seq.

drug treatment centers, for example), the applicant shall provide a plan addressing security needs to protect the health and safety of the public as well as the occupants of the proposed facility. Such plan shall include a description of the specific services to be offered; types of patients and/or residents to be served; and the staff to be employed for this purpose. The plan shall identify the forms of security normally required with care of the type to be offered and detail the specific measures to be taken in the construction, development and operation of the facility so as to provide appropriate security. The plan shall, at a minimum, reasonably restrict unauthorized entry and/or exit to and from the property and provide for effective separation from adjoining residences by means of fencing, signs, or a combination thereof. The plan shall also address measures to ensure that lighting and noise is controlled, particularly with respect to loudspeakers or other amplification devices and floodlights.

- Q. Water supply. All uses shall be provided with an adequate and safe water supply, as demonstrated by evidence to be provided by the applicant documenting that the siting, density and design of all proposed residential, commercial, industrial and other developments or uses will assure the availability of reliable, safe and adequate water supplies to support the proposed land use(s) within the capacity of available water resources.
- R. Sewage disposal.
- (1) Sewage disposal shall be provided by a system meeting the needs of the proposed use and the requirements of the Borough and the Pennsylvania Department of Environmental Protection. Discharge to such system shall be limited to normal, domestic and human bodily wastes unless the treatment system has been specifically designed to handle other wastes or the wastes are pretreated in accord with Pennsylvania Department of Environmental Protection or local sewer authority requirements. No discharge of wastes, by-products or materials in any way associated with a production process, health care or veterinary facility medical wastes, funeral home wastes, or other commercial wastes shall be permitted to any subsurface, land-application or other soil-based sewage disposal system.
 - (2) Any sewage treatment plant facilities shall be a minimum of 100 feet from any public or private road right-of-way or property line.
- S. Other regulations. The Zoning Officer, Planning Commission, Borough Council or the Zoning Hearing Board, as the case may be, may require documentation from the applicant demonstrating that the project complies with all other applicable local, state and federal regulations, and said proposal has obtained all required permits, certifications and authorizations, including but not limited to those from the Pennsylvania Department of Transportation, the Pennsylvania Department of Environmental Protection, the Pennsylvania Department of Labor and Industry, the Federal Emergency Management Agency and the United States Environmental Protection Agency.¹⁰⁹

§ 400-30. Environmental impact statement.

109. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- A. The intent of this § 400-30 is to provide the identification of environmental and community impacts and means of mitigation of impacts of development projects in the Borough. The Borough Council, Planning Commission or Zoning Hearing Board, as the case may be, may, based upon the nature of a project and potential impacts on the Borough, require the developer to prepare and submit to the Borough an environmental impact statement (EIS) for the following types of developments and uses:
- (1) Industrial parks.
 - (2) Light manufacturing or manufacturing or industrial uses.
 - (3) Junkyards.
 - (4) Natural resource uses.
 - (5) Natural resource uses processing.
 - (6) Agricultural products processing.
 - (7) Solid waste facilities and staging areas.
 - (8) Warehouses and trucking terminals.
 - (9) Any use involving the initial or cumulative disturbance of 87,120 or more square feet of soil surface areas.
 - (10) Any use involving the initial or cumulative construction, installation and/or placement of 43,560 square feet or more of buildings, structures or other impervious surface areas.
 - (11) Any use involving development in any floodplain area.
- B. The requirements of this § 400-30 may be applied to any other proposed conditional use or special exception which, for reasons of location, design, existing traffic or other community or environmental considerations, as determined by the Borough, warrants the application of the study required as contained herein in order to determine what conditions should be required to mitigate any adverse effects of the proposed use. The Borough Council, Planning Commission or Zoning Hearing Board, as the case may be, may waive certain components of the EIS should such components be deemed unnecessary for certain uses.
- C. Purpose of EIS. The purpose of the EIS is to disclose the environmental consequences of a proposed action for consideration by the Borough for the determination of approval or denial of the project and, if the project is approved, for the establishment of conditions of approval. This requirement is made in order to protect the natural environment with respect to water quality, water supply, soil erosion, pollution of all kinds, flooding and waste disposal, and to preserve trees and vegetation, to protect watercourses, air resources and aquifers.
- D. Contents of EIS.
- (1) an environmental impact statement shall include a description of the proposed use, including location in relationship to other projects or proposals, with

adequate data and detail for the Borough to assess the environmental impact. The EIS shall also include a comprehensive description of the existing environment and the probable future effects of the proposal. The description shall focus on the elements of the environment most likely to be affected as well as potential regional effects and ecological interrelationships.

- (2) At a minimum, the EIS shall include an analysis of the items listed below regarding the impact of the proposed use and the mitigation of any such impacts, and said proposal shall comply with all other standards included in this chapter and other Borough ordinances:

(a) Soil types.

- [1] USDA soil types (show on map).
- [2] Permeability of soil on the site.
- [3] Rate of percolation of water through the soil for each five acres.

(b) Surface waters.

- [1] Distance of site from nearest surface water and headwaters of streams.
- [2] Sources of runoff water.
- [3] Rate of runoff from the site.
- [4] Destination of runoff water and method of controlling downstream effects.
- [5] Chemical additives to runoff water on the site.
- [6] Submission of an erosion and sediment control plan meeting the requirements of the PA DEP and the Lackawanna County Conservation District.
- [7] Said information shall be set forth in a stormwater management plan meeting the requirements of Chapter 300, Subdivision and Land Development.

(c) Ground cover, including vegetation and animal life.

- [1] Extent of existing impervious ground cover on the site.
- [2] Extent of proposed impervious ground cover on the site.
- [3] Type and extent of existing vegetative cover on the site.
- [4] Extent of proposed vegetative cover on the site.
- [5] Type of animal life and effect on habitat.

(d) Topographic and geologic.

- [1] Maximum existing elevation of site.

- [2] Minimum existing elevation of site.
- [3] Maximum proposed elevation of site.
- [4] Minimum proposed elevation of site.
- [5] Description of the topography of the site and any special topographic features and any proposed changes in topography.
- [6] Surface and subsurface geology.
- (e) Ground water.
 - [1] Average depth to seasonal high water table.
 - [2] Minimum depth to water table on site.
 - [3] Maximum depth to water table on site.
 - [4] Quality.
- (f) Water supply.
 - [1] The source and adequacy of water to be provided to the site.
 - [2] The expected water requirements (gallons per day) for the site.
 - [3] The uses to which water will be put.
- (g) Sewage disposal.
 - [1] Sewage disposal system (description and location on the site of system).
 - [2] Expected content of the sewage effluent (human waste, pesticides, detergents, oils, heavy metals, other chemicals).
 - [3] Expected daily volumes of sewage.
 - [4] Affected sewage treatment plant's present capacity and authorized capacity.
- (h) Solid waste.
 - [1] Estimated quantity of solid waste to be developed on the site during and after construction.
 - [2] Method of disposal of solid waste during and after construction.
 - [3] Plans for recycling of solid waste during and after construction.
- (i) Air quality.
 - [1] Expected changes in air quality due to activities at the site during and after construction.
 - [2] Plans for control of emissions affecting air quality.

- (j) Noise.
 - [1] Noise levels, above existing levels, expected to be generated at the site (source and magnitude) during and after construction.
 - [2] Proposed method for control of additional noise on site during and after construction.
- (k) Land use and community character.
 - [1] Past and present use of the site with particular attention to storage or disposal of toxic or hazardous waste.
 - [2] Adjoining land uses and character of the area.
 - [3] Type and concentration of land uses.
- (l) Critical impact areas. Any area, condition or feature which is environmentally sensitive or which, if disturbed during construction, would adversely affect the environment. Critical impact areas include, but are not limited to, stream corridors, streams, wetlands, slopes greater than 15%, highly acid or highly erodible soils, areas of high water table, and mature stands of native vegetation and aquifer recharge and discharge areas.
- (m) Historic resources. Identification of structures or sites of historic significance and probable effect of project.
- (n) Transportation network. Existing network traffic volumes and capacities and need for improvements required by project.
- (o) Law enforcement. Existing law enforcement capabilities of the Borough and state, and assessment of the impact of the proposed development on said law enforcement agencies along with actions proposed to mitigate any burdens created by the development.
- (p) Community facilities and services. Existing community facilities and services and how the proposed use will affect those facilities and services, including projected needs for additional facilities and services.
- (q) Economic and other social impacts. The local economy and social structure and how the proposed use is likely to affect it.
- (r) Additional requirements. In addition to the above requirements, the Planning Commission and/or Borough Council or the Zoning Hearing Board may require such other information as may be reasonably necessary for the Borough to evaluate the proposed use for its effect on the community.

E. Additional considerations. The following shall also be addressed:

- (1) A description of alternatives to the proposed use.
- (2) A statement of any adverse impacts which cannot be avoided.

- (3) Environmental protection measures, procedures and schedules to minimize damage to critical impact areas during and after construction.
 - (4) A list of all licenses, permits and other approvals required by municipal, county or state law and the status of each.
 - (5) A listing of steps proposed to minimize environmental damage to the site and region during and after construction.
- F. Qualifications. The EIS shall be prepared by a professional architect, landscape architect, planner, engineer or other qualified individual whose qualifications have been previously approved by the Borough Council or the Zoning Hearing Board, as the case may be.
- G. Procedures for evaluating the environmental impact statement shall be as follows:
- (1) Upon receipt of the application, the Borough shall forward the EIS to the Borough Engineer and any other agency or firm which the Borough may desire for consultation.
 - (2) The above-mentioned agencies shall review the applicant's EIS and shall report their comments to the Planning Commission and Borough Council or Zoning Hearing Board.
 - (3) The Planning Commission and/or Borough Council or Zoning Hearing Board may require the opinion of experts in its review of the EIS.
 - (4) Fees for the costs of such consultation, as described in § 400-30G(1) and (3) above, shall be paid by the applicant.
 - (5) Copies of the EIS shall be on file and available for inspection in the Borough office.
 - (6) The Planning Commission shall evaluate the proposed project and the EIS and recommend action on same to the Borough Council or Zoning Hearing Board.

§ 400-31. Special conservation standards.

All uses permitted by this chapter shall be subject to the following special conservation performance standards, which shall apply to any lands that are characterized as steep slopes, wetlands or floodplains. The procedures and standards are as follows:

- A. Steep slope areas. Steep slopes shall be defined as slopes in excess of 25% grade, as determined by the Zoning Officer from United States Geological Survey topographic maps or NRCS soil maps. In cases where the slope cannot be specifically determined by said means, the Zoning Officer may require the applicant to provide certification from a professional engineer or registered land surveyor of the slope in question. Slope shall be measured at the points where any earth will be disturbed or where structures or other improvements are proposed. Any use or development of such steep slope areas shall be considered a conditional use, and in reviewing applications for use of sites partially or wholly included within an area identified as steep-sloped, the Borough Council and Planning Commission shall be satisfied that the following performance standards have been

or will be met:

- (1) An accurate map prepared by a registered surveyor in the Commonwealth of Pennsylvania has been submitted showing property boundaries, building and drive locations, contours at two-foot intervals and any areas to be graded. The proposed location of other factors shall also be shown, including streams, wetlands, areas subject to landslides and extent of vegetative cover.
 - (2) A grading and drainage plan has been prepared showing existing and proposed ground surfaces, plans for drainage devices, plans for walls or cribbing, etc., map of the drainage area affected, computation of the amount of runoff expected, an erosion control plan and schedule for completion of work.
 - (3) Impervious surfaces are kept to a minimum.
 - (4) No finished grade where fill is used shall exceed a fifty-percent slope.
 - (5) Where fill is used to later support structures, a minimum compaction of 90% of maximum density shall be achieved.
 - (6) At least 50% of the area to be used for any building or construction purposes shall be less than fifteen-percent slope.
 - (7) Soils characterized by the Natural Resources Conservation Service as highly susceptible to erosion shall be avoided.
 - (8) Roads and utilities shall be installed along existing contours to the greatest extent possible.
 - (9) Any steep slope areas also characterized by seasonal high-water tables shall be avoided.
 - (10) Natural vegetation shall be preserved to as great a degree as possible.
 - (11) In cases where structures are proposed, the applicant shall submit plans to the Zoning Officer detailing how the limitations of slope will be mitigated by the design of the structure(s).
- B. Wetlands. If the Borough determines that wetlands may be present or may be impacted by the proposed development, the Borough may require wetlands, as defined and regulated by the Pennsylvania Department of Environmental Protection, the United States Army Corps of Engineers and the United States Fish and Wildlife Service, to be delineated on any application proposing a new use or expanded use of land. The applicant shall be responsible for said delineation and shall warrant that said wetlands have been properly delineated. If no wetlands are present, the applicant shall provide a certified statement to that effect. No development shall be undertaken by the applicant except in accord with all state and federal wetland regulations, and the applicant shall provide to the Borough evidence of such compliance. No zoning approval granted by the Borough shall in any manner be construed to be an approval of compliance by the applicant with any state or federal wetland regulations, and the Borough shall have no liability or responsibility to the applicant or any other person for compliance with said regulations.

- C. Buffer for water bodies. For the purposes of protecting water quality and ensuring recreational access to water bodies, a buffer zone/building setback of not less than 25 feet shall be maintained from any body of water or stream, unless a greater setback is required by other Borough regulations. No buildings, structures (except uncovered docks), sewage disposal systems or other impervious surfaces (except approved boat launches and street and driveway crossings) shall be constructed or placed within these buffer zones. In residential subdivisions, this strip shall be protected via a protective easement.
- D. Floodplain. Floodplain shall be governed by the Dalton Borough floodplain regulations.¹¹⁰

110.Editor's Note: See Ch. 197, Floodplain Management.

ARTICLE VIII
Standards for Specific Uses

§ 400-32. Adult businesses.

A. Findings. In adopting these standards which apply to adult businesses, the Borough Council has made the following findings in regard to the secondary effects on the health, safety and welfare of the citizens of the Borough. The findings are based on evidence concerning the adverse secondary effects of adult uses on the community, presented in hearings and in reports made available to the Borough Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986). *Young v. American Mini Theaters*, 427 U.S. 50 (1976), and *Northend Cinema, Inc. v. Seattle*, 585 P. 2d 1153 (Wash 1978), and on studies in other communities, including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Saint Paul, Minnesota; Manatee County, Florida; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Los Angeles, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Beaumont, Texas; and New York City, New York; and also on findings found in the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, June 6, 1989, State of Minnesota.

- (1) The concern over sexually transmitted diseases is a legitimate health concern of the Borough which demands reasonable regulation of adult businesses and adult uses in order to protect the health and well-being of the citizens.
- (2) Certain employees of sexually oriented business regulated by this chapter as adult businesses engage in higher incidents of certain types of sexually oriented behavior at these businesses than employees of other establishments.
- (3) Sexual acts, including masturbation, oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semiprivate booths or cubicles for viewing films, videos or live sex shows, as regulated by this chapter as adult bookstores, adult novelty shops, adult video stores, adult motion-picture theaters, or adult arcades.
- (4) Offering and providing such space encourages such activities, which create unhealthy conditions.
- (5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- (6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (AIDS), genital herpes, hepatitis B, non-B amebiasis, salmonella infections and shigella infections, and the incidence of many of these diseases is on the increase.
- (7) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those

facilities.

- (8) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view adult-oriented films.
- (9) Classifying adult businesses as conditional uses is a reasonable means of accountability to ensure that operators of adult businesses comply with reasonable regulations and conditions and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.
- (10) There is convincing documented evidence that adult businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of property values, and the decline of the overall character of the community. A number of municipal studies, including the 1986 Austin, Texas study, have demonstrated this.
- (11) It is generally recognized that adult businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to neighborhood blight and downgrading the quality of life in the adjacent area. A number of municipal studies, including the 1986 Austin, Texas study, have demonstrated this.
- (12) The Borough desires to minimize and control these adverse secondary effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve property values and the character of the surrounding community.

B. Intent. It is the intent of this § 400-32 to:

- (1) Regulate adult business in order to promote the public health, safety and welfare by minimizing the secondary effects on the community which are associated with such businesses, which include difficulties for law enforcement, trash disposal, deleterious effects on business and residential property values, increased crime (particularly the corruption of morals of minors and prostitution), and which drive residents and businesses to move elsewhere.
- (2) Designate a zoning district where adult businesses are permitted, and establish reasonable, content-neutral standards applicable to such uses.
- (3) Have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented or adult materials.
- (4) Not totally restrict or deny access by adults to sexually oriented materials or adult materials protected by the First Amendment of the Bill of Rights of the United States Constitution.
- (5) Not deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

- (6) Not condone or legitimize the distribution of obscene material or encourage any violation of the Pennsylvania Crimes Code or Pennsylvania Obscenity Code.
- C. Conditional use in the M-1 District. Adult businesses are classified as conditional uses in certain districts, which provides a suitable area for the development of such uses away from areas designated for residential development.
- D. Standards. In addition to the Borough's anti-nudity and other applicable ordinances and the other applicable general standards and the conditional use criteria contained in this chapter, the following standards shall apply to adult businesses:
 - (1) Setback. In addition to the other setbacks established by this chapter, adult businesses shall not be located less than:
 - (a) One hundred feet from any:
 - [1] Residence.
 - [2] Group care facility.
 - [3] Commercial enterprises catering primarily to persons under 18 years of age.
 - [4] Public or semipublic building or use.
 - [5] Public park or public recreation facility.
 - [6] Health facility.
 - [7] Any establishment that sells alcoholic beverages.
 - [8] Church or synagogue.
 - [9] Public or private school.
 - (2) Measurement. The setback distances established in this § 400-32 shall be as measured from the nearest edge of the building used for the subject use, measured in a straight line (without regard to intervening structures or objects) to the nearest lot line of the premises of a use from which the required setback applies.
 - (3) Enlargement. An existing, lawful adult business may be expanded as a conditional use once in total floor area beyond the floor area that lawfully existed in such use at the time of adoption of this provision of the chapter, but only in accord with Article IX of this chapter.
 - (4) Limit of one use. It shall be a violation of this chapter for any person to cause or permit the operation, establishment or maintenance of more than one adult business in the same building, structure or portion thereof, or an increase of floor area of any adult business in any building, structure or portion thereof that contains another adult business.
 - (5) Nonconformity. Any adult business lawfully operating on the date of enactment of this chapter that is in violation of any of the provisions of this

§ 400-32 shall be deemed a nonconforming use. Such nonconforming uses shall not be increased, enlarged, altered or extended, except as permitted in § 400-32D(4) above. The use may be changed to a conforming use. However, under no circumstances shall a nonconforming use as defined and regulated by this chapter be changed to any type of adult business.

- (6) Location of new neighboring uses. An adult business lawfully operating as a conforming use shall not be rendered a nonconforming use if, subsequent to the grant of a conditional use permit, a use from which an adult business is required to provide a setback under § 400-32D(1) above is developed within the required setback distance. Any additions or expansions of the use shall comply with § 400-32D(1) above.
- (7) Alcohol. No adult business shall be operated in combination with the sale and/or consumption of alcoholic beverages on the premises.
- (8) Visibility and signs. No sexually explicit material, signs, display, silhouette or word shall be visible at any time from outside of the building. Exterior signs shall comply with the provisions of Article XI of this chapter; however, business identification signs shall be limited to a maximum of 20 square feet and signs attached to the building facade shall be limited to a maximum total of 10 square feet. Content of such signs shall be limited to only the text of the name of the business and the hours of operation.
- (9) Exemption for modeling class. It is a defense to prosecution under this § 400-32 that a person appearing in a state of nudity did so in a modeling class operated:
 - (a) By a proprietary school, licensed by the state, or an academically accredited college or university;
 - (b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation;
 - (c) In a structure:
 - [1] Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - [2] Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
 - [3] Where no more than one nude model is on the premises at any one time; or
 - (d) By an organization which qualifies under Section 501(c)(3) of the United States Internal Revenue Code¹¹¹ as a nonprofit organization or foundation.

111. Editor's Note: See 26 U.S.C. § 501(c)(3).

§ 400-33. Agricultural uses: crop production and livestock operations.

In addition to the other applicable standards of this chapter, agricultural uses shall be subject to the following requirements:

- A. Crop production. Crop production shall be permitted in any district on any size of parcel of land.
- B. Livestock operations. Livestock operations shall be permitted only in R-R Districts and only where livestock is at all times kept a minimum of 200 feet from any dwelling or principal nonresidential structure not located on the same parcel on which the livestock is kept.
- C. State-protected agricultural operations. Nothing in this chapter is intended to preclude the rights and protections of bona fide agricultural operations afforded by the Pennsylvania Right to Farm Law,¹¹² as amended; the Pennsylvania Agricultural Area Security Law,¹¹³ as amended; and other applicable state statutes. Such rights and protections, in terms of limiting the application of the standards in this chapter, shall be afforded to such uses of land which meet the minimum definition of agricultural use as established by the applicable state statute.

§ 400-34. Airports and heliports.

The standards in this § 400-34, in addition to other applicable standards in this chapter, shall apply to all proposed new and certain expansions of airports and heliports as defined and regulated by this chapter.

- A. Conditional use. The existence of airport hazard zones limits the uses of surrounding landowners. No airport shall be permitted to make any change which would affect the location of airport surface zones, approach zones or hazard zones, and no new airport shall be developed unless conditional use approval has been granted. In addition to the requirements of § 400-28 of this chapter, the following procedures and criteria shall apply to any airport conditional use application. The following shall constitute changes at an airport requiring conditional use approval prior to the change.¹¹⁴
 - (1) Any extension of a runway's length or location;
 - (2) Any change in the height of a runway;
 - (3) The paving of any previously unpaved portions of a runway, if such paving results in any change in airport rating category under 67 Pa. Code § 471.5, as amended, affecting or altering the location or extent of any airport hazard zone;
 - (4) Any change of runway direction or alignment;
 - (5) Any change in the status of taxiways or holding areas affecting the location areas of airport hazard zones;

112.Editor's Note: See 3 P.S. § 951 et seq.

113.Editor's Note: See 3 P.S. § 901 et seq.

114.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (6) Any change in airport rating category under 67 Pa. Code § 471.5, as amended, affecting or altering the location or extent of any airport hazard zone.
 - (7) Any other physical, legal or rating change, or change in methods of operation, flight paths or change in instrumentation or technology resulting in a change in the location or extent of any airport hazard zone.
 - (8) Any expansion or change otherwise defined as a conditional use by this chapter.
- B. Application contents. The application for conditional use shall contain the following documents and information:
- (1) A full narrative description of the airport and any changes proposed.
 - (2) Plans and maps prepared by a registered professional engineer showing the airport and any changes proposed to the airport.
 - (3) Plans and maps prepared by a registered professional engineer showing existing and proposed locations of the airport hazard zones.
 - (4) Copies of all applications, correspondence, documents, maps or plans submitted to the FAA and the Bureau of Aviation relating to the proposed change or construction, rating change, or other rating, legal or physical change.
 - (5) A plan showing how the lands or air rights negatively affected shall be acquired.
 - (6) A list of the names and addresses of all landowners negatively affected by the proposed airport, or for a change within a height of 75 feet from the surface of said lands, by the change in airport hazard zones.
 - (7) A list of the names and addresses of all landowners adjoining lands owned or leased by the airport owner.
- C. Engineering review. The Borough Engineer shall review the application and report whether the application to the Planning Commission complies with all applicable ordinances, laws and regulations relating to airport hazard zones. The Borough Engineer shall also report how the proposed airport or change will affect neighboring landowners and landowners in airport hazard zones. The Borough Engineer shall also review and report on expected obstructions to aircraft resulting from the airport or change and upon the adequacy, feasibility and practicality of the applicant's plan to acquire the necessary air rights.
- D. Costs. Any airport or change to an airport resulting in a change of airport hazard zones shall be considered a land development and, in accord with Section 503(1) of the Pennsylvania Municipalities Planning Code,¹¹⁵ the applicant shall be responsible for paying all reasonable and necessary charges of the Borough's professional consultants or engineer relating to application review and report under the terms of Chapter 300, Subdivision and Land Development.

115.Editor's Note: See 53 P.S. § 10503(1).

- E. Notice to FAA, the Bureau of Aviation and the County. The Zoning Officer shall send a copy of the completed application to the Bureau of Aviation, FAA and the County Planning Department by certified mail at least 14 days before the date of the hearing.
- F. Criteria to review. In granting or denying a conditional use, the Council shall consider:
 - (1) The effect upon reasonable use of properties affected by the proposal;
 - (2) How the applicant plans to acquire any necessary air rights;
 - (3) The character of the flying operations expected to be conducted at the airport;
 - (4) The nature of the terrain within the airport hazard zone area;
 - (5) The character of the community which is affected by the proposal;
 - (6) The effect upon roads, development, transportation routes, and other aspects of the Borough's Comprehensive Plan;
 - (7) The provision of hazard lighting and marking;
 - (8) The importance of aircraft safety.
- G. Runway and landing pad setbacks. The edges and ends of any runway and/or helicopter landing pad shall be a minimum of 250 feet from any property line.

§ 400-35. Amusement parks.

Amusement parks are classified as conditional uses in certain districts, and in addition to all other applicable standards of this chapter, amusement parks shall be subject to the following standards.

- A. Parcel size. A minimum parcel of five acres shall be required.
- B. Fencing. A fence not less than six feet in height and of such design to restrict access shall completely surround the amusement park, and said fence shall not be placed less than 10 feet from any property line or public road right-of-way.
- C. Structure height. No ride, structure or other amusement attraction shall be located closer to any setback line than the height of said ride, structure or amusement.
- D. Hours of operation. Hours of operation shall be limited to the period between 9:00 a.m. and 11:00 p.m.

§ 400-36. Animals, keeping of.

- A. Kennels. Kennels are considered conditional uses in the R-R District and shall be subject to § 400-84 of this chapter and the following conditions:
 - (1) Parcel size. A minimum parcel of two acres shall be required.
 - (2) Setbacks. Any structure used for the keeping of dogs shall meet the setbacks in Table 400-36A.

- (3) **Parking.** Adequate off-street parking shall be provided pursuant to this chapter, with one space for each nonresident employee and one space per four dogs kept on the premises.
- (4) **Noise barrier.** A noise barrier consisting of a solid fence not less than six feet in height or a dense vegetative planting of not less than six feet in height shall be provided at a distance not to exceed 15 feet and fully encircling all kennel areas not enclosed in a building.
- (5) **Hours outdoors.** All animals shall be restricted from using kennel areas not fully enclosed in a building from 8:00 p.m. to 8:00 a.m.
- (6) **Wastes.** The applicant shall provide for adequate and proper disposal at a PA DEP-approved facility of all any waste materials generated on the premises, and a detailed plan for the same shall be included with the zoning application. In any case, all animal wastes shall be stored in watertight containers in an area meeting the setbacks in Subsection A(2) of this § 400-36 until disposed of, and proof of such disposal shall be provided to the Borough.
- (7) **Nuisances.** The kennel shall not create any nuisance due to odor, noise, dust or other factor on any neighboring property.

Table 400-36A**Lot Size and Setbacks for Kennels and Stables**

	Minimum Lot Size	Property Line Setback	Road Setback*	Existing Building Setback**
Type of Use	(acres)	(feet)	(feet)	(feet)
Private stable and boarding stables	2	50	50	100
Commercial stable	25	100	75	100
Kennel	2	50	50	75

* Applies to any public or private road right-of-way.

** Applies to any existing principal residential or commercial building not located on the project premises.

B. **Stables, private.** Private stables and boarding stables are permitted as an accessory use to a single-family residence in accord with the Schedule of Uses and subject to the following conditions:

- (1) **Parcel size.** A minimum parcel size of two acres shall be required for the residence and stable.
- (2) **Number of horses.** No more than two horses shall be kept, except that one additional horse may be kept for each additional full one acre of land in excess of the minimum lot size required in Table 400-36A.
- (3) **Building size.** The building used to house the horses shall meet the most

current Society for the Prevention of Cruelty to Animals standards.

- (4) Fences. All horses shall be restricted from grazing or intruding on an adjoining property by adequate fences or other means.
 - (5) Parking. Adequate off-street parking shall be provided pursuant to this chapter.
 - (6) Setbacks. Any stable building or corral or other indoor or outdoor area used for feeding of animals, concentrated confinement of animals or manure storage shall meet the setbacks on Table 400-36A. These setbacks shall not apply where the affected adjoining or neighboring property owner provides a written, notarized, letter stating the acceptance of a lesser, specified setback.
 - (7) Existing structures. On parcels meeting the minimum parcel size requirement, the use of an existing structure for housing of horses, which structure does not meet the required setbacks on Table 400-36A, may be permitted as a conditional use, provided the applicant can document that no nuisances will be created due to noise, odor or other factors, and the Borough can establish adequate conditions to assure the same.
 - (8) Nuisances; manure management. The operation of the stable shall not create any nuisance due to odor, noise, dust or other factor on any neighboring property, and the applicant shall provide a plan for soil erosion and sedimentation control and manure management for approval by the Borough.
 - (9) Uses permitted. The following types of uses shall be permitted as part of the operation:
 - (a) Breeding, raising, keeping and sale of horses, and necessary buildings and structures.
 - (b) Training of horses, and necessary buildings and structures, including facilities for training and lessons only.
 - (c) Boarding of horses.
- C. Stables, commercial and horses for hire. Commercial stables, including horses for hire, shall, in addition to all other applicable requirements of this chapter, comply with the following requirements:
- (1) Parcel size. A minimum parcel of 25 acres shall be required, and a single-family residence for the owner or manager shall be permitted on the premises, provided all other sections of this chapter and other applicable standards are met.
 - (2) Number of horses. No more than 10 horses are kept, with the exception that one additional horse may be kept for each additional one acre of land in excess of the minimum acreage required in § 400-36C(1).
 - (3) Building size. The building used to house the horses shall not be less than 200 square feet in size for one horse, with an additional 200 square feet for each additional horse.
 - (4) Fences. All horses shall be restricted from grazing or intruding on an adjoining

property by fences or other means.

- (5) Parking. Adequate off-street parking shall be provided pursuant to this chapter, with one space provided for each nonresident employee and one space per two horses kept on the premises.
 - (6) Setbacks. Any stable building or corral or other indoor or outdoor area used for feeding of animals, concentrated confinement of animals or manure storage shall meet the setbacks on Table 400-36A. These setbacks shall not apply where the affected adjoining or neighboring property owner provides a written, notarized, letter stating the acceptance of a lesser, specified setback.
 - (7) Nuisances; manure management. The operation of the stable shall not create any nuisance due to odor, noise, dust or other factor on any neighboring property, and the applicant shall provide a plan for soil erosion and sedimentation control and manure management for approval by the Borough.
 - (8) Uses permitted. The following types of uses shall be permitted as part of the horse farm operation:
 - (a) Breeding, raising, keeping and sale of horses and necessary buildings and structures.
 - (b) Training of horses and necessary buildings and structures, including facilities for training only, which are set back a minimum of 150 feet from all neighboring and adjoining property lines and any public or private road right-of-way.
 - (c) Boarding of horses and necessary buildings and structures.
 - (d) The hire of horses for riding or other use by persons other than the owners of the horses or the owners' guests.
 - (e) Sale of horses other than the horses raised or boarded on the premises.
 - (f) Retail sales of goods or merchandise which are incidental and accessory to the stable use.
- D. Zoos, menageries, and wild and exotic animals. No individual other than a registered veterinarian in the course of his professional duties or a licensed falconer who keeps and maintains only his own birds is permitted to maintain, keep or possess within the Borough any wild or exotic animal except in an approved menagerie or zoo. Menageries and zoos shall, in addition to all other applicable requirements of this chapter, comply with the following requirements:
- (1) A minimum parcel size of five acres shall be required.
 - (2) All animals and animal quarters shall be kept in a clean and sanitary condition. Adequate ventilation shall be maintained.
 - (3) The permit holder shall use every reasonable precaution to assure that the animals are not teased, abused, mistreated, annoyed, tormented or in any manner made to suffer by any means.

- (4) Animals which are enemies by nature or are temperamentally unsuited shall not be quartered together or so near each other as to cause the animals fear or to be abused, tormented or annoyed.
- (5) The permit holder shall maintain the premises so as to eliminate offensive odors or excessive noise.
- (6) The permit holder shall not permit any condition causing disturbance of the peace and quiet of his neighbors.
- (7) Animals must be maintained in quarters so constructed as to prevent their escape. The permit holder assumes full responsibility for recapturing any animal that escapes from his premises. The permit holder shall make adequate provisions and safeguards to protect the public from the animals.
- (8) The operation shall conform to all applicable local, state and federal laws and regulations.
- (9) Any building, corral or other indoor or outdoor area used for feeding of animals, concentrated confinement of animals or animal fecal matter storage shall not be located within 100 feet of any adjoining property line and 75 feet from any public or private road right-of-way.
- (10) The applicant shall provide for adequate disposal of any and all waste materials generated on the premises, and a detailed plan for the same shall be included with the zoning application.

§ 400-37. Communications antenna and communications towers.

A. The following regulations shall apply to communications antenna and communications towers and support structures as defined in Article XI and referred to as "communication devices (CD)" in this section. Such CD and associated facilities shall be permitted only in the districts as provided in this § 400-37 and Article IV. The Borough Council makes the following findings:

- (1) Technical developments in the telecommunications field have provided new options for the expansion and delivery of communications services to the Borough of Dalton and its residents.
- (2) The Council recognizes that the Borough of Dalton, its police, fire and emergency medical services and its residents and visitors rely on wireless communications services for business and personal uses.
- (3) The Council therefore desires to encourage efficient and adequate wireless communications services within the Borough of Dalton while at the same time protecting the public health, safety and welfare.
- (4) In an effort to facilitate efficient and adequate communications services and protect the interests of its residents, the Council of Dalton Borough desires to regulate the construction and the placement of communications towers and antennas.
- (5) Federal and state statutes and regulations impose certain limitations on the

Borough of Dalton's ability to regulate the placement and construction of communications towers and antennas.

- (6) It is necessary to amend this chapter to make it consistent with the interests of the Borough of Dalton and its residents and the limitations imposed by federal and state statutes and regulations.

B. Purposes.

- (1) To accommodate the need for communication devices while regulating their location and number in the Borough in recognition of the need to protect the public health, safety and welfare.
- (2) To minimize the adverse visual effects of communications devices and support structures through proper design, siting and vegetative screening.
- (3) To avoid potential damage to adjacent properties from communications device support structure failure and falling ice, through engineering and proper siting of support structures.
- (4) To encourage the joint use of any commercial communications device support structures and to reduce the number of such structures needed in the future.

C. Permits; use regulations. A permit shall be required for every CD installed at any location, and the following use regulations shall apply:

- (1) Existing tall structures. A CD site with a CD that is attached to an existing communications tower, smokestack, water tower, or other tall structure where the height of the CD does not exceed the height of the existing structure (as it existed at the time before the first CD attachment) by more than 15 feet shall be permitted in all districts as an accessory use, and conditional use approval shall not be required. However, a CD shall not be mounted on any residential dwelling. The applicant shall provide the following information:
 - (a) Evidence from a Pennsylvania-registered professional engineer certifying that the proposed installation will not exceed the structural capacity of the building or other structure, considering wind and other loads associated with the antenna location.
 - (b) Detailed construction and elevation drawings indicating how the antennas will be mounted on the structure for review by the Borough for compliance with the Dalton Borough Building Code and other applicable requirements.
 - (c) Evidence of recorded agreements and/or easements necessary to provide access to the building or structure on which the antennas are to be mounted so that installation and maintenance of the CD and associated equipment can be accomplished.
- (2) New structures and CD exceeding 15 feet on existing structures – R-R only. A site with a CD that is either not mounted on an existing structure or is more than 15 feet higher than the structure on which it is mounted shall be permitted only in R-R and M-1 Districts and shall require conditional use approval in

accord with this § 400-37.

- (3) Associated use. All other uses ancillary to the CD (including a business office, maintenance depot, vehicle storage, etc.) are prohibited from the CD site, unless otherwise permitted in the zoning district in which the CD site is located. This shall not prohibit the installation as accessory structures of equipment buildings not intended for human occupancy to house only equipment necessary for the operation of the CD.
- (4) CD as a second principal use. A CD facility shall be permitted on a property with an existing use, subject to the following land development standards:
 - (a) The CD shall be fully automated and unattended on a daily basis and shall be visited only for periodic maintenance.
 - (b) The minimum lot area, minimum setbacks and maximum height required by this chapter for the CD and support structure shall apply, and the land remaining for accommodation of the existing principal use(s) on the lot shall also continue to comply with the minimum lot area, density and other requirements.
 - (c) The vehicular access to the equipment building shall, whenever feasible, be provided along the circulation driveways of the existing use in accord with § 400-37D(10).
 - (d) The applicant shall present documentation that the owner of the property has granted and filed of record an easement or other legal interest for the land for the proposed facility and that vehicular access is provided to the facility. A copy of all documentation shall be provided to the Zoning Officer.

D. Standards.

- (1) Location requirement and number. The applicant shall demonstrate to the satisfaction of the Borough, using technological evidence, that the CD must go where it is proposed in order to satisfy its function in the company's grid system. The number of CDs to be installed at a site by an applicant may not exceed the current minimum necessary to ensure the adequacy of current service required by the Federal Communications Commission (FCC) license held by that applicant. The applicant must document the need for the additional CD to ensure the adequacy of current service and shall provide information on the general location of other towers/sites planned for the region.
- (2) Co-location; new tower. If the applicant proposes to build a tower (as opposed to mounting the CD on an existing structure), the Borough may require the applicant to demonstrate that it contacted in writing the owners of tall structures within a one-mile radius of the site proposed, asked for permission to install the CD on those structures, and was denied for reasons other than economic ones. This would include smokestacks, water towers, tall buildings, CD support structures of other cellular phone companies, other communications towers (fire, police, etc.) and other tall structures. The Borough may deny the application to construct a new tower if the applicant

has not made a good faith effort to mount the CD on an existing structure thereby documenting that there exists no other support structure which can reasonably serve the needs of the owner of the proposed CD. A good faith effort shall demonstrate that one or more of the following reasons apply to a particular structure:

- (a) The proposed equipment would exceed the structural capacity of the existing structure, and its reinforcement cannot be accomplished at a reasonable cost.
 - (b) The proposed equipment would cause radio frequency interference with other existing equipment for that existing structure, and the interference cannot be prevented at a reasonable cost.
 - (c) Such existing structures do not have adequate location, space, access or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - (d) Addition of the proposed equipment would result in electromagnetic radiation from such structure exceeding applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation.
 - (e) A commercially reasonable agreement could not be reached with the owners of such structures.
- (3) CD height. The applicant shall demonstrate that the CD is at the minimum height required to function satisfactorily and provide adequate height for eight service providers. The Borough may require the tower to be designed and constructed to be stackable (structurally capable of being increased in height), so that additional antennas arrays can be accommodated in addition to the arrays on the original tower to facilitate future co-location. CD equipment buildings shall comply with the accessory structure height limitations of the applicable zoning district.
- (4) Parcel size; setbacks. If a new CD is constructed (as opposed to mounting the CD on an existing structure) or if the CD height exceeds the height of the existing structure on which it is mounted by more than 15 feet, the zoning district minimum lot, lease, license or easement size shall apply, and in all cases the lot shall be of such size that all required setbacks are satisfied. The distance between the base of the support structure and any adjoining lot, lease, license or easement line shall not be less than the height of the CD. The setback for equipment buildings, other accessory structures and guy wire anchors shall be a minimum of 30 feet.
- (5) CD health and safety. CD shall comply with all applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation. The applicant shall demonstrate that the proposed CD is safe and the surrounding areas will not be negatively affected by support structure failure, falling ice or other debris, electromagnetic fields, or radio frequency interference. All support structures shall be fitted with anti-climbing devices, as approved by manufacturers. The applicant shall submit

certification from a Pennsylvania-registered professional engineer that a proposed CD will be designed and constructed in accordance with the current Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, published by the Telecommunications Industry Association and applicable requirements of any applicable building code. Prior to initial operation, the owner and/or operator of the CD shall provide a certification from a Pennsylvania-registered professional engineer that the CD complies with all applicable regulations.

- (6) Fencing. A fence shall be required around the CD support structure, guy wire anchors and other equipment, unless the CD is mounted on an existing structure. The fence shall be a minimum of eight feet in height.
- (7) Landscaping. Landscaping shall be required to screen as much of the support structure as possible, the fence surrounding the support structure and any other ground-level features (such as a building), and, in general, buffer the CD site from neighboring properties. The Borough may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if the same achieves the same degree of screening as the required landscaping. If the CD is mounted on an existing structure and other equipment is housed inside an existing structure, landscaping shall not be required. In addition, existing vegetation on and around the site shall be preserved to the greatest extent possible.
- (8) Co-location; other uses. In order to reduce the number of CD support structures needed in the community in the future, the proposed support structure shall be required to accommodate other users, including but not limited to other cellular phone companies and local fire, police, and ambulance companies. The applicant shall provide evidence of written contact with all wireless service providers who supply service within the Borough for the purpose of assessing the feasibility of co-located facilities. The proposed structure, if evidenced by need as determined by the Borough, shall be constructed to provide available capacity for other providers should there be a future additional need for such facilities.
- (9) Licenses; other regulations; insurance. The applicant must demonstrate that it has obtained the required licenses from the Federal Communications Commission, the Pennsylvania Public Utility Commission and other agencies. The applicant shall also document compliance with all applicable state and federal regulations. The applicant shall submit the name, address and emergency telephone number for the operator of the CD and a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the CD.
- (10) Access; easement; required parking. Access to the CD shall be provided by means of a public street or easement to a public street. The easement shall be a minimum of 20 feet in width and shall be improved to a width of at least 12 feet with a dust-free, all-weather surface for its entire length. If the CD site is fully automated, adequate parking shall be required for maintenance workers, with a minimum of one space per service provider. If the site is not automated,

the number of required parking spaces shall equal the number of people on the largest shift.

- (11) CD design, lighting and signs; FCC and PennDOT notice. Unless the Borough Council determines that a standard CD design is more appropriate, all CDs shall be constructed to resemble a living evergreen tree common to the area with brown bark-like solid center structures with evergreen leaf-like appendages. This shall include but not be limited to the tower, antenna and support structures. If a standard design is permitted, CD support structures under 200 feet in height should be painted silver or have a galvanized finish retained in order to reduce the visual impact. Support structures may be painted green up to the height of nearby trees. Support structures 200 feet in height or taller, those near airports, or those which are otherwise subject to Federal Aviation Administration (FAA) regulations shall comply with said regulations. No CD may be artificially lighted unless required by the Federal Aviation Administration. No signs shall be mounted on a communications tower, except as may be required by the Federal Communications Commission, Federal Aviation Administration or other applicable regulation. The applicant shall provide a copy of the response to notice of proposed construction or alteration forms submitted to the FAA and PennDOT Bureau of Aviation, and the CD shall comply with all FAA and PennDOT requirements.
- (12) Communications interference. The applicant shall document that the radio, television, telephone or reception of similar signals in the area will not be disturbed or diminished.
- (13) Historic structures. A CD shall not be located on a building or structure that is listed on a historic register or within 500 feet of such a structure.
- (14) Discontinued use. Should any CD cease to be used as a communications facility, the owner or operator or then owner of the land on which the CD is located shall be required to remove the same within one year from the abandonment of use. Failure to do so shall authorize the Borough to remove the facility and assess the cost of removal to the foregoing parties. The Borough may also file a municipal lien against the land to recover the costs of removal and attorney's fees. In addition, at the time of building permit issuance, the Borough shall require a financial guarantee, in a term, form and amount determined by the Borough Council with the advice of the Borough Solicitor, to guarantee the removal of the tower.
- (15) Site plan. A full site plan shall be required for all CD sites, showing the CD, buildings, fencing, buffering, access, and all other items required in Chapter 300, Subdivision and Land Development. The site plan shall not be required if the CD is to be mounted on an existing structure and the CD does not exceed the height of the existing structure by more than 15 feet.
- (16) Review fees. The applicant shall pay all professional costs incurred by the Borough for review of structural, radio frequency and other technical aspects of the proposal and shall deposit with the Borough an amount deemed adequate by the Borough Council to cover the anticipated costs. Should the

review costs exceed the deposit, an additional assessment shall be made. If the deposit exceeds the cost, the balance shall be returned to the applicant. No approval shall become effective until all costs have been paid by the applicant.

§ 400-38. Detention facilities.

In addition to all other applicable standards, detention facilities shall be in strict conformity with the following specific requirements and regulations and shall be permitted only in those districts as specified in the Schedule of Uses.

- A. Setbacks. The building and all secure areas shall meet the setbacks for the district and shall not be less than 100 feet from any:
 - (1) Residence.
 - (2) Group care facility.
 - (3) Commercial enterprises catering primarily to persons under 18 years of age.
 - (4) Public or semipublic building or use.
 - (5) Public park or public recreation facility.
 - (6) Health facility.
 - (7) Church or synagogue.
 - (8) Public or private school.
- B. Fence. A perimeter security fence, of a height and type determined by the Borough, may be required.
- C. Security. All applications shall include for approval by the Borough a plan addressing security needs to protect the health and safety of the public as well as residents of the proposed facility. Such plan shall include a description of the specific services to be offered, types of residents to be served, and the staff to be employed for this purpose. The plan shall identify the forms of security normally required with care of the type to be offered and detail the specific measures to be taken in the construction, development and operation of the facility so as to provide appropriate security. The plan shall, at a minimum, reasonably restrict unauthorized entry and/or exit to and from the property and provide for effective separation from adjoining residences by means of fencing, signs, or a combination thereof. The plan shall also address measures to ensure that lighting and noise is controlled, particularly with respect to loudspeakers or other amplification devices and floodlights.
- D. Accessory uses and ancillary activities. Accessory uses permitted in conjunction with an institution shall include laboratories, offices, snack bars, educational facilities and programs, vocational training facilities and programs, recreational and sports facilities, and other accessory uses ordinarily provided in conjunction with such institutions.

§ 400-39. Junkyards.¹¹⁶

Junkyards shall be permitted only in those districts as specified in the Schedule of Uses and, in addition to the standards in Article VII, § 400-28, and other applicable regulations, shall comply with the following requirements:

- A. Annual license. On and after the effective date of this chapter, no person shall establish, maintain or operate or continue to maintain or operate a junkyard, and no person shall establish, maintain or operate or continue to maintain or operate any premises in such manner which constitutes a junkyard under the terms of this chapter, except as authorized by this chapter and with a license issued by the Borough. All licenses shall be valid for a period of one year beginning January 1 and expiring January 1 of the following year. All licenses must be renewed annually on or before January 1 of each year.
- (1) Application. Any person intending to operate or currently operating a junkyard in the Borough shall make annual application for a license. Said application shall be made on a form prescribed by the Borough and shall, at a minimum, contain the following information. Said application shall be made concurrently with that for any required zoning approval.
 - (a) Name of applicant.
 - (b) Address and telephone of applicant.
 - (c) The location of the junkyard.
 - (d) Property owner, if different than applicant.
 - (e) Any criminal record of the applicant, owner or associates involved in the business.
 - (f) Signature of the applicant and owner.
 - (2) Plan. The application shall include a plan of the proposed junkyard, showing, at a minimum, the following information:
 - (a) All information required for land developments by Chapter 300, Subdivision and Land Development.
 - (b) The location of principal structures on all properties within 1,000 feet of the junkyard premises.
 - (3) Annual fee. The operator of every junkyard shall pay an annual license fee for the issuance or renewal of every license. The fee shall be established by resolution of the Borough Council.
 - (4) Annual bond. The operator of every junkyard shall, as part of the annual license requirement, provide a bond to cover the cost of any junk removal undertaken by the Borough in response to violation of this chapter. Nothing herein shall legally bind the Borough Council to effect the removal of any junk and the remediation of any environmental problems associated with any junk,

116. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

which shall remain the ultimate responsibility of the owner of the property upon which the junk is located and the owner of the junk.

- (a) Amount. A surety bond shall accompany every application for license. The amount of the bond shall be established by the Borough Council based upon the size and nature of the proposed junkyard, but in no case shall the amount be less than \$20,000.
 - (b) Form. The bond shall be executed by a surety company authorized by the laws of the Commonwealth of Pennsylvania to transact business within the Commonwealth of Pennsylvania. The Borough may, in lieu of such surety bond, accept a bond executed by the applicant for license if such bond is secured by the deposit with the Borough Secretary of a cashier's check, treasurer's check, or certificates of deposit of a banking institution in the total sum as established by the Council.
 - (c) Annual renewal. The bond shall be renewed and refiled annually along with the annual license renewal.
 - (d) Term. The bond shall be executed in favor of the Borough and shall be for the use of the Borough. The term of the bond shall be for one year.
 - (e) It shall be the condition of the bond that if, upon and after the issuance of such license, the said licensee does not fully and faithfully observe and comply with the provisions of this chapter and any other applicable approvals or regulations, the Borough Council shall have the authority to use such bond to effect the required compliance and/or the removal of junk.
- (5) Determination of issuance. Upon receipt of a completed application and fee, the Borough Council, at a duly advertised meeting, shall take action to grant or deny the license application or renewal. Said action shall be based upon the suitability of the premises for the operation of a junkyard; the character of adjacent properties and the likely effect of the junkyard; the general health, safety and welfare of Borough residents; the potential hazards to neighboring properties and structures; and the past performance of the licensee in the case of renewals. No license shall be issued for a new junkyard unless and until the proper zoning and land development approvals are granted by the Borough Council. If approval is granted, the licenses shall be issued and shall be conspicuously posted on the junkyard premises. Any license shall be for the operation of the junkyard only upon the premises for which the license is issued, and no license shall be transferable by any means.
- (6) Records.
- (a) Every licensee shall maintain written records of the following information for all junk purchased, acquired or received:
 - [1] Date and approximate time of purchase, acquisition or receipt of junk.
 - [2] Full and complete description, including trade names and serial

numbers, if any.

[3] Name and address of person from whom junk was obtained.

- (b) Such records shall be maintained for a period of five years and shall, at all times, be subject to the inspection of the Borough.
- (7) Revocation. Any license issued under this chapter may be revoked by the Borough Council in the event the said licensee is found to have given any false information or in any way misrepresented any material fact upon which the Borough has relied in granting the license or where the licensee violates any provisions of this chapter. No fee refunds shall be made in such case.
- B. Property owner responsibility. It shall be the ultimate responsibility of the property owner of the premises upon which any junk is situated and the owner of any such junk to comply with this chapter and to provide for the removal of such junk and remediation of any environmental problems associated with any junk.
- C. Operating standards. All existing and proposed junkyards licensed under the provisions of this chapter shall be established, maintained and operated in accord with the following standards:
 - (1) Federal and state regulations. Any junkyard located adjacent to a federal aid highway shall comply with all regulations of the Federal Highway Administration, and all junkyards shall meet the licensing and screening requirements of the Commonwealth of Pennsylvania.
 - (2) Fencing. All junkyards shall be completely enclosed by a chain-link fence not less than eight feet in height. All gates shall be closed and locked when closed for business. All fences and gates shall be maintained in good repair and in such a manner as not to become unsightly. There shall be no advertising of any kind placed on the fence. The foregoing fencing provisions shall be applicable only to that portion of the premises being immediately used for the storage of junk and shall not be applicable to the balance of the property owned or used by said junkyard operator so long as said remaining portion of land is not being used for the storage of junk as defined in this chapter.
 - (3) Screening. All junkyards shall be screened to the satisfaction of the Borough Council from any adjoining or neighboring property, any public road right-of-way, or any other premises, and natural vegetative cover shall be maintained in all required setback areas. Vegetative plantings of sufficient height and density, berms, topography or fencing of such design may be used to effect the required screening as determined by the Borough Council. All screening shall be maintained in such fashion as to continue to provide the required screening.
 - (4) Setbacks. The fence enclosing any junkyard and any structures associated with the junkyard shall be located not less than 100 feet from any public road right-of-way, 100 feet to any property line, or 150 feet from any principal residential or commercial structures existing at the time of adoption of this chapter. The requirements of this Subsection C(4) shall not apply to junkyards existing prior to the effective date of this chapter and which fully complied with prior Borough regulations applicable to junkyards. However, the expansion of any

such existing junkyard into an area already not used for the storage of junk shall comply with this Subsection C(4).

- (5) Dumping. The area used for a junkyard shall not be used as a dump area for any solid waste as defined by this chapter.
- (6) Burning. No burning whatsoever shall be permitted on the premises.
- (7) Hazardous materials. In cases where the junkyard includes 10 or more junk vehicles or where the Borough Council deems it necessary to meet the intent of this chapter, and to further protect groundwater and surface water, all batteries, coolants, gasoline, diesel fuel, engine oil, any other petroleum products and any other noxious or potentially contaminating materials must be removed from all junk within two working days after arrival to the premises and shall be disposed of in a manner meeting all state and federal requirements. Such liquids and materials, while stored on the premises, shall be kept separately in leakproof containers at a central location on the premises.
- (8) Water quality. In cases where the junkyard includes 10 or more junk vehicles or where the Borough Council deems it necessary to meet the intent of this chapter, the owner of any junkyard shall be required to monitor the groundwater and surface water in the vicinity of the junkyard. Water testing shall be conducted every three months on any stream located on the premises or any stream within 500 feet of any area used for the storage of junk if water drainage from the junkyard area is to said stream. For each testing period, two samples shall be collected; one sample shall be taken from the stream at a point upstream of the junkyard drainage area and one sample shall be taken from the stream at a point below the junkyard drainage area. In addition, the well located on the premises shall also be sampled every three months. The samples shall be collected and analyzed by a certified water analysis laboratory for hydrocarbons or other parameters deemed appropriate by the Borough Council, and results shall be provided to the Borough. If said samples exceed the limits established by the Pennsylvania Department of Environmental Protection, the junkyard shall cease operation until such time as the source of the contamination has been identified and corrected.
- (9) Fire lanes. Fire lanes of a minimum width of 20 feet shall be maintained so that no area of junk shall span a distance of more than 50 feet.
- (10) Hours of operation. Any activity associated with the operation of the junkyard that produces any noise audible beyond the property line shall be conducted only between the hours of 7:00 a.m. and 8:00 p.m. During business hours, an adult attendant shall, at all times, remain on the premises.
- (11) Stacking of junk. Junk vehicles or major parts thereof shall not be stacked on top of any other junk vehicle or major part. No junk shall be stacked or piled to a height of greater than 10 feet.
- (12) Nuisances. All premises shall, at all times, be maintained so as not to constitute a nuisance, or a menace to the health, safety and welfare of the community or to the residents nearby, or a place for the breeding of rodents and vermin. Within two days of arrival on the premises, all glass shall be removed from

any broken windshield, window or mirror, and all trunk lids, appliance doors and similar closure devices shall be removed. Grass and weeds on the premises shall be kept mowed.

- (13) Waste. Waste shall not be stored outside and shall not be accumulated or remain on any premises except temporarily awaiting disposal in accord with this chapter. No junkyard shall be operated or maintained in violation of any state or federal regulations governing the disposal of any solid or liquid waste.
- (14) Fireproof structures. Every structure erected upon the premises and used in connection therewith shall be of fireproof construction.

§ 400-40. Mineral extraction and minor mineral extraction.

- A. Findings. The primary minerals of importance extant in the Borough are sand and gravel and quarry stone. The Pennsylvania Municipalities Planning Code¹¹⁷ clearly recognizes mineral extraction as a lawful use. Along with other community effects, such uses can have impacts on water supply sources and are governed by state statutes that specify replacement and restoration of affected water supplies. In addition, the MPC now severely limits the range of development and operational standards which can be applied to mineral extraction by local municipalities, with location standards the primary tool available to the Borough. Municipalities Planning Code Section 603(i)¹¹⁸ states that zoning ordinances shall provide for the reasonable development of minerals in each municipality. The MPC definition of minerals is: "Any aggregate or mass of mineral matter, whether or not coherent." The term includes, but is not limited to, limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite and clay, anthracite and bituminous coal, coal refuse, peat, and crude oil and natural gas. The MPC at Section 603(b)¹¹⁹ allows zoning ordinances to regulate mineral extraction, but only to the extent that such uses are not regulated by the state Surface Mining Conservation and Reclamation Act, the Noncoal Surface Mining Conservation and Reclamation Act, and the Oil and Gas Act.¹²⁰ These acts regulate such things as setbacks, dust, noise, blasting, water supply effects, and reclamation.
- B. Intent. The intent of this section is to ensure the Borough is supplied with all necessary information for making an informed decision about the proposed mineral extraction and to establish the foundation for any conditions required to protect the public health, safety and general welfare. In addition, location standards are included which are not addressed by the preemptive state statutes.
- C. Mineral extraction processing – a separate use. Any use which involves the refinement of minerals by the removal of impurities, reduction in size, transformation in state, or other means to specifications for sale or use, and the use of minerals in any manufacturing process such as, but not limited to, concrete or cement batching plants, asphalt plants and manufacture of concrete and clay

117.Editor's Note: See 53 P.S. § 10101 et seq.

118.Editor's Note: See 53 P.S. § 10603(i).

119.Editor's Note: See 53 P.S. § 10603(b).

120.Editor's Note: See, respectively, 52 P.S. § 1396.2 et seq.; 52 P.S. § 3301 et seq.; and now 58 Pa.C.S.A. § 3201 et seq. (as the Oil and Gas Act, former 58 P.S. § 601.101 et seq., was repealed in 2012 by P.L. 87, No. 13).

products, shall be considered mineral processing, a separate and distinct use regulated as manufacturing by this chapter. This shall not preclude the incidental screening, washing, crushing and grading of materials originating on the site as part of a mineral extraction operation.

- D. Mineral extraction, minor. The intent of this section is to permit in the R-R District mineral extraction operations limited in area, duration and mechanical operations. Mineral extraction operations with an open face of 10,000 square feet or less, which will not result in a total disturbed area of more than two acres on any one parcel over the life of the operation, and which do not involve on-site screening, washing, crushing and grading, and/or any mineral processing or the use of manufacturing equipment, shall be hereinafter referred to as "mineral extraction, minor." The duration of the minor mineral extraction process shall not exceed 180 days, and reclamation of the entire site shall be completed within one year of the issuance of the zoning use permit. The subdivision of a parcel to qualify for additional mineral extraction, minor uses shall not be permitted. Mineral extraction, minor uses shall be exempt from the plan submission requirements of this § 400-40; however, said operations shall comply with the operational and rehabilitation standards.
- E. Location requirements. Mineral extraction and mineral extraction, minor shall be permitted only in those districts specified in the Schedule of Uses and only in accord with the requirements of this § 400-40 and all other applicable ordinance requirements. The mineral extraction operation shall comply with the following additional location requirements:
- (1) Parcel size. The minimum parcel size shall be 10 acres for mineral extraction, minor and 50 acres for mineral extraction.
 - (2) Property line setback, zoning district setback and buffer. A setback of 100 feet shall be maintained between any mineral extraction operation and adjoining properties and public road rights-of-way. In addition, a setback of 300 feet shall be required between a mineral extraction operation and the boundary line of any zoning district where dwellings are permitted. These setback areas shall be undisturbed to provide a buffer and shall not be used for parking, storage or any other purpose except landscaping and crossing of access roads. In determining the type and extent of the buffer required, the Borough shall take into consideration the design of the project structure(s) and site, topographic features which may provide natural buffering, existing natural vegetation, and the relationship of the proposed project to adjoining areas. If required, the landscaped buffer may be installed in the setback area and shall consist of trees, shrubbery and other vegetation and shall be a minimum of 25 feet wide. Design details of buffers shall be included on the site plan, and buffers shall be considered "improvements" for the purposes of guaranteeing installation in accord with the requirements for land developments in Chapter 300, Subdivision and Land Development. It shall be the responsibility of the property owner to maintain all buffers in good condition, free of rubbish, and replace any dying or dead plants or deteriorating landscape material.
- F. Local, state and federal regulations. Mineral extraction and mineral extraction, minor operations shall comply with all applicable local, state and federal laws and rules and regulations. No zoning permit shall be issued until such time as the

applicant provides evidence of compliance with state and federal regulations. Applicable laws and rules and regulations include, but are not limited to, the Noncoal Surface Mining Conservation and Reclamation Act and the Clean Streams Law.¹²¹

- G. Information requirements. The applicant shall, at a minimum, provide the information required by this chapter and the information required for land developments in Chapter 300, Subdivision and Land Development. In addition, the applicant shall submit all other information required to enable the Borough to assess the environmental, community and other public health, safety and welfare effects of the proposed operation. The findings of the Borough based on this information shall serve as a basis for the establishment of conditions of approval in accord with the Pennsylvania Municipalities Planning Code.¹²²
 - (1) DEP application information. The applicant shall provide a copy of all applications and information required by the applicable DEP rules and regulations. However, applicants proposing mineral extraction operations qualifying as small noncoal operations under DEP regulations shall provide all information required by Chapter 77, Noncoal Mining, of the DEP rules and regulations, for operations which are not considered small noncoal operations.
 - (2) Surface water and groundwater protection, traffic impact study and environmental impact statement. The Borough shall require for mineral extraction, and may require for mineral extraction, minor, the applicant to submit details about groundwater and surface water protection, an environmental impact statement, and a traffic impact study for major impact developments.
- H. Reporting requirements. For any mineral extraction operation approved by the Borough, the operator shall submit to the Borough copies of all DEP-required or DEP-issued documents and reports associated with the operation within 15 days of the date of the document or report.

§ 400-41. Self-storage facilities.

Self-storage facilities shall be permitted only in those districts as specified in the Schedule of Uses and shall comply with the following standards in addition to all other applicable standards of this chapter.

- A. Bulk requirements. Minimum lot size, lot width and setbacks, and maximum lot coverage and building height shall conform to district standards. Minimum distance between buildings shall be 20 feet.
- B. Setback areas. There shall be no storage, use or structure within the setback area, with the exception of the access drive(s).
- C. Fence. The facility shall be surrounded by a fence of such height and design as to restrict access to the warehouse, and said fence shall not be less than six feet in height and shall be located between the warehouse and any required vegetative

¹²¹.Editor's Note: See, respectively: 52 P.S. § 3301 et seq.; and 35 P.S. § 691.1 et seq.

¹²².Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

screening.

- D. Habitation. No storage unit shall be used for habitation or residential purposes and individual mini-warehouse units shall not be served by a water supply or a sewage disposal system.
- E. Storage limitations. No storage unit shall be used for any other purpose except storage and shall not be used for any other type of commercial or manufacturing activity. No material, supplies, equipment or goods of any kind shall be stored outside of the warehouse structure, with the exception of the vehicles required for the operation of the warehouse and boats and recreational vehicles and trailers.
- F. Lighting. All facilities shall be provided with adequate outdoor lighting for security purposes, and such lighting shall be so directed as to prevent glare on adjoining properties.
- G. Fire/water damage. All storage units shall be fire-resistant and water-resistant.
- H. Materials stored. All self-storage facility proposals shall include detailed information on the nature and quantity of materials to be stored on the premises. Proposed space rental agreements shall be submitted with the conditional use application and shall provide specific rules and regulations to ensure that the requirements of this § 400-41 are or will be satisfied.

§ 400-42. Solid waste.

Solid waste facilities, including transfer stations and staging areas, herein referred to as "facilities," shall be permitted only in those districts as specified in the Schedule of Uses and shall, in addition to the other applicable standards in this chapter, be subject to all applicable state and federal regulations and the requirements of this § 400-42.

- A. Traffic study. The applicant shall provide evidence by a professional person or firm competent to perform traffic analysis showing that the traffic generated by the site will not cause a reduction in the level of service on the roads used by said facility. The applicant shall provide copies of the completed traffic analysis to the Borough Engineer for review and approval. The Borough Engineer shall transmit the review in writing to Borough Council, the applicant and other known parties of interest prior to the hearing. If the facility will cause a reduction in the level-of-service approval shall not be granted.
 - (1) The traffic study and plan shall establish the most direct proposed route or routes for vehicles carrying solid waste to the facility. This route shall minimize impacts on any residence, commercial or retail establishment, public school or religious institution.
 - (2) The traffic impact study and plan shall include proposed remedial actions to be taken in the event of a solid waste spill or accident involving a vehicle transporting solid waste.
- B. Yards. All parts of any facility created after the effective date of this chapter shall meet the setbacks established for the district and shall not be less than 100 feet from any:

- (1) Residence.
 - (2) Group care facility.
 - (3) Commercial enterprises catering primarily to persons under 18 years of age.
 - (4) Public or semipublic building or use.
 - (5) Public park or public recreation facility.
 - (6) Health facility.
 - (7) Church or synagogue.
 - (8) Public or private school.
- C. Fencing. All facilities shall be completely enclosed by a chain-link fence not less than 10 feet in height. The erection of said fence shall be completed within six months after the effective date of this chapter for existing facilities and prior to the issuance of a certificate of use for a new facility. All gates shall be closed and locked when closed for business. The fence and gate shall be maintained in such a manner as not to become unsightly. There shall be no advertising of any kind placed on the fence.
- D. Environmental impact statement. As part of the conditional use process, the Borough may require the applicant to prepare and submit an environmental impact statement pursuant to § 400-30 of this chapter.
- E. Storage and loading/unloading. Storage of materials, supplies or solid waste in motor vehicles, truck trailers or other containers normally used to transport materials shall not be permitted. Any solid waste stored for more than three hours shall be stored in an enclosed building. For any facility other than a sanitary landfill, all transfer, loading and unloading of solid waste shall only occur within an enclosed building and over an impervious surface which drains into a holding tank that is then adequately treated.
- F. Effluent treatment. The facility shall provide for treatment and disposal for all liquid effluent and discharges generated by the facility due to the storage, loading or unloading, transfer, container or vehicle washing, or other activity undertaken in processing or transporting the solid waste. All such activities shall be conducted only over an impervious surface, and all drainage shall be collected for treatment. Any water discharge from the facility after being treated by the wastewater treatment system shall meet all applicable Department of Environmental Protection regulations and Sewer Authority requirements.
- G. Dangerous materials. No radioactive, hazardous, chemotherapeutic or infectious materials may be disposed of or stored or processed in any way, except for types and amounts of hazardous substances customarily kept in a commercial business for on-site use. Infectious materials are defined as "medical wastes used or created in the treatment of persons or animals with seriously contagious diseases."
- H. Water quality. The owner of any facility shall be required to monitor the groundwater and surface water in the vicinity of the facility. Water testing shall be

conducted every three months on any stream located on the premises or any stream within 500 feet of any area used for the storage or disposal of solid waste if water drainage from the facility is to said stream. For each testing period, two samples shall be collected; one sample shall be taken from the stream at a point upstream of the solid waste disposal facility drainage area, and one sample shall be taken from the stream at a point below the facility drainage area. In addition, the well located on the premises shall also be sampled every three months. The samples shall be collected and analyzed by a certified water analysis laboratory for hydrocarbons or other parameters deemed appropriate by the Borough Council and results shall be provided to the Borough. If said samples exceed the limits established by the Pennsylvania Department of Environmental Protection, the facility shall cease operation until such time as the source of the contamination has been identified and corrected.

- I. Emergency access. The operator of the facility shall cooperate fully with local emergency services. This should include allowing practice exercises on the site and the provision of all information needed by the emergency services to determine potential hazards. Adequate means of emergency access shall be provided.
- J. Hours of operation. Under the authority granted to the Borough under state Act 101 of 1988,¹²³ all such uses shall be permitted to operate only between the hours of 7:00 a.m. to 7:00 p.m. and are not permitted to operate on Sundays, Christmas Eve Day, Christmas Eve, New Year's Day, 4th of July, Labor Day, Memorial Day or Thanksgiving Day. All deliveries of solid waste shall be made during the hours between 7:00 a.m. to 5:00 p.m. and not on Sundays or the above-specified holidays.
- K. Nuisances. Any facility shall be operated in such a manner to prevent the attraction, harborage or breeding of insects, rodents or vectors. The applicant shall prove to the satisfaction of the Borough Council that the use would not routinely create noxious odors off of the tract. The operator shall regularly police the area of the facility and surrounding street to collect litter that may escape from the facility or truck. The applicant shall provide documentation to the satisfaction of the Borough Council that the proposed facility shall operate in such a manner as to not create a general nuisance, endanger the public health, safety and welfare, or inhibit the public's use or enjoyment of their property.
- L. Attendant and inspections. An attendant shall be present during all periods of operation or dumping. The applicant shall, if granted a conditional use permit, allow access at any time to the facility for inspection by appropriate Borough officials and provide the Borough with the name and phone number of a responsible person(s) to be contacted at any time in the event of an inspection.
- M. State and federal regulations and reporting. The operation and day-to-day maintenance of the facility shall comply with all applicable state and federal regulations as a condition of the continuance of any permit of the Borough. Violations of this condition shall also be considered to be violations of this chapter. All solid waste transfer facilities (as defined by this chapter) shall be subject to all requirements of 25 Pa. Code Chapter 279 (as amended), Transfer Facilities, regardless of whether a permit pursuant to said requirement is required. Where a

123. Editor's Note: See 53 P.S. § 4000.101 et seq.

difference exists between applicable state regulations and Borough regulations, it is intended for the purposes of this § 400-42 that the more stringent requirements shall apply. A copy of all written materials and plans that are submitted to DEP by the applicant shall be concurrently submitted to the Zoning Officer.

§ 400-43. Temporary commercial uses.

The provisions of this section are intended to allow limited temporary uses in the Borough at locations in C-2 Zoning Districts that will not compromise public health, safety and general welfare.

- A. Definition of temporary commercial use. A temporary commercial use is a commercial enterprise that operates at a fixed location for a temporary period of time on a parcel of land without other uses or in connection with some other established use. Temporary commercial uses shall include, but not be limited to, any use conducted from mobile trailers, from vehicles, or in the open air. Any use which involves the erection of any permanent or temporary structures, including, among others, tents, platforms, or sheds, or any on-site tables or seating, shall be considered a principal use and shall comply with all requirements of this chapter which normally apply to such principal use as classified by the Schedule of Use Regulations.
- B. Procedure. Temporary commercial uses are conditional uses in C-2 Districts, and in addition to the provisions of § 400-84 the provisions in this § 400-43 shall apply.
- C. License. A license is required for all temporary commercial uses. The number of temporary commercial use licenses allowed in the Borough shall be limited to four. Licenses shall be issued on a first-come, first-serve basis and shall be valid for a period of one year from the date of issuance. The holder of a temporary license shall have the right of renewal. However, if a holder of a license does not actually engage in the licensed temporary commercial use during any consecutive ten-month period, the license shall become invalid and the permit holder shall have waived the right of renewal. If the use is found to be in violation of any required standards, the license shall be revoked until compliance is achieved.
- D. Location and setbacks. No temporary commercial use shall operate within any public right-of-way and shall meet the setbacks required for principal structures in the C-2 District.
- E. Signs. One sign not exceeding 10 square feet is permitted for temporary commercial uses.
- F. Parking/access. Adequate off-street parking for the exclusive use of the operation shall be provided. Access to the operation shall consist of a well-defined entrance and exit to prevent uncontrolled ingress and egress. Parking on any public road right-of-way shall not be permitted.
- G. Sanitary facilities. Sanitary facilities meeting the Borough's requirements shall be provided or documentation shall be provided demonstrating access to such facilities within 500 feet of the operation.
- H. Plan. A plan showing the location of the operation, parking, access and other

necessary information shall be with the license application.

§ 400-44. Treatment centers/clinics, medical offices and health facilities.

In addition to all other applicable standards, treatment centers/clinics, and medical offices and health facilities, including, but not limited to, hospital facilities and nursing and adult homes, whether publicly or privately operated, shall comply with the following requirements and shall be permitted only in those districts as specified in the Schedule of Uses.

- A. Waste disposal. Details shall be provided by the applicant about the types and amount of medical and hazardous waste generated or anticipated to be generated at the facility and how such waste will be handled, stored and disposed of in accord with state and federal requirements.
- B. Security. In cases where deemed necessary by the Borough, the applicant shall provide a plan addressing security needs to protect the health and safety of the public as well as the occupants of the proposed facility. Such plan shall include a description of the specific services to be offered, types of patients and/or residents to be served, and the staff to be employed for this purpose. The plan shall identify the forms of security normally required with care of the type to be offered and detail the specific measures to be taken in the construction, development and operation of the facility so as to provide appropriate security. The plan shall, at a minimum, reasonably restrict unauthorized entry and/or exit to and from the property and provide for effective separation from adjoining residences by means of fencing, signs, or a combination thereof. The plan shall also address measures to ensure that lighting and noise is controlled, particularly with respect to loudspeakers or other amplification devices and floodlights.
- C. Treatment centers/clinics. The following additional standards shall apply to treatment centers/clinics.
 - (1) In addition to meeting the setbacks for the district, the building and all secure areas shall not be less than 100 feet from any:
 - (a) Residence.
 - (b) Group care facility.
 - (c) Commercial enterprises catering primarily to persons under 18 years of age.
 - (d) Public or semipublic building or use.
 - (e) Public park or public recreation facility.
 - (f) Health facility.
 - (g) Church or synagogue.
 - (h) Public or private school.
 - (2) A security plan shall be provided in accord with § 400-29P of this chapter.

- (3) A perimeter security fence may be required by the Borough and shall be a minimum of 10 feet in height and constructed of chain-link, topped with barbed or concertina wire as may be required by the Borough.
- (4) Methadone treatment facilities, as defined by Section 621(d) of the Pennsylvania Municipalities Planning Code,¹²⁴ shall, in addition to the other requirements of this § 400-44, comply with the requirements of Section 621 of the Pennsylvania Municipalities Planning Code.

§ 400-45. Vehicle-related uses.

Vehicle-related uses shall be permitted only in those districts as specified in the Schedule of Uses and, in addition to all other applicable standards, shall comply with the standards in this § 400-45.

- A. Car and truck wash facilities. All car and truck wash facilities shall be subject to the following specific regulations and requirements:
 - (1) The principal building housing the said facility shall be set back a minimum of 60 feet from the road or street right-of-way line and 30 feet from the side or rear property lines.
 - (2) Appropriate facilities for the handling of wastewater from the washing activities shall be provided, including the prevention of water being dripped onto the adjoining road or street from freshly washed vehicles during periods of freezing weather. The facility shall be designed to recycle water in accord with most current industry practices.
 - (3) The facility shall have adequate means of ingress and egress to prevent adverse effects to either vehicular or pedestrian traffic. When a wash facility occupies a corner lot, the access driveways shall be located at least 75 feet from the intersections of the front and side street right-of-way lines.
 - (4) The site shall be sufficiently large to accommodate vehicles awaiting washing during peak periods, but in no case shall the waiting area for each stall accommodate less than three automobiles.
 - (5) Any wash facility located within 200 feet of any residential district shall not operate between the hours of 9:00 p.m. and 7:00 a.m.
- B. Gasoline service stations and vehicle or equipment repair operations. All gasoline service stations and vehicle or equipment repair operations shall be subject to the following specific regulations and requirements:
 - (1) The principal building housing the operation shall be setback a minimum of 60 feet from the road or street right-of-way line and 30 feet from the side or rear property lines.
 - (2) All service and repair activities shall be conducted within a completely enclosed building where adequate measures shall be taken to minimize motor noise, fumes and glare; except that minor servicing such as changing tires, sale

¹²⁴Editor's Note: See 53 P.S. § 621(d).

of gasoline or oil, windshield washing and other similar normal activities may be conducted outside the said building.

- (3) Only vehicles with current licenses and current registration waiting to be repaired or serviced or waiting to be picked up by the vehicle owner may be stored outdoors. If a legitimate, bona fide, service station stores more than four vehicles per service stall outdoors, it shall comply with the junk regulations set forth in this chapter.
 - (4) No area on the lot which is required for the movement of vehicles in and about the buildings and facilities shall be used for complying with the off-street parking requirements of this chapter.
 - (5) All new or used tires and parts shall be stored within a completely enclosed building or area contained by a solid fence to provide screening. Used tires and parts shall not be stored on the premises in excess of what would normally accumulate in a week of normal operation.
 - (6) Gasoline pumps and other service appliances may be located in the required front yard but shall not be situated closer than 15 feet from the road or street right-of-way line. Any aboveground storage tanks shall not be placed in the front setback area.
 - (7) No vehicles shall be stored in any required setback areas.
 - (8) All major repair, welding, auto body, painting and similar work shall be performed within a building with a fume collection and ventilation system that directs noxious fumes away from any adjacent buildings. All such systems shall meet all required state and federal health and safety standards.
- C. Vehicle or equipment sales operations. All vehicle or equipment display and sales operations of new and used automobiles, trucks, motorcycles, mobile homes, recreation vehicles, boats, and travel trailers and other vehicles and equipment shall be subject to the following specific requirements:
- (1) All principal and accessory buildings and structures shall be in accord with the yard setback, building height and lot coverage requirements of the district.
 - (2) The outdoor display of new and used cars, trucks, motorcycles, mobile homes, recreation vehicle and travel trailers shall meet the appropriate front, side and rear setback requirements as for the district.
 - (3) Activities which are normally accessory to such sales operations, such as engine tuneup and repairs, body repairs, painting, undercoating and other similar activities shall be conducted in accord with the applicable standards in § 400-45B above.
 - (4) Only vehicles with current license and current registration waiting to be repaired or serviced or waiting to be picked up by the vehicle owner may be stored in any exterior area. If a legitimate, bona fide, service station stores more than four vehicles per service stall in exterior areas, it shall comply with the junkyard regulations set forth in this chapter. Proof of current license and current registration or ownership of any vehicle will be required upon demand

by the Zoning Officer.

- (5) No area on the lot which is required for the movement of vehicles in and about the buildings and facilities shall be used for complying with the off-street parking requirements of this chapter.
 - (6) All new or used tires and parts shall be stored within a completely enclosed building or area contained by a solid fence to provide screening. Piles or stacks of tires or other materials in exterior areas shall be prohibited at all times.
 - (7) No vehicles shall be stored in any required setback areas.
- D. Racetracks. All racetracks for motor-driven vehicles, including but not limited to automobiles, trucks, go-carts, motorcycles, motor scooters, dune buggies, watercraft, and the like, shall be located not less than 1/2 mile from any R-1 or R-2 District, and the track/course shall not be less than 500 feet from any property line or public road right-of-way.

§ 400-46. Wind farms.

In addition to all other applicable standards in this chapter, the following regulations shall apply to wind farms, which shall be permitted as conditional uses only in the districts as provided by the Schedule of Uses.

A. Purposes.

- (1) To accommodate the need for wind farms while regulating their location and number in the Borough in recognition of the need to protect the public health, safety and welfare.
- (2) To avoid potential damage to adjacent properties from windmill structure failure and falling ice through engineering and proper siting of such structures.

B. Permits; use regulations.

- (1) Permits. A permit shall be required for every wind farm and windmill installed at any location in the Borough.
- (2) Associated use. All other uses ancillary to the wind farm (including a business office, maintenance depot, etc., greater than 1,000 square feet) are prohibited from the wind farm, unless otherwise permitted in the zoning district in which the wind farm is located. This shall not prohibit the installation as accessory structures of equipment containers not intended for human occupancy to house only equipment necessary for the operation of the wind farm.
- (3) Wind farm as a second principal use. A wind farm shall be permitted on a property with an existing use, subject to the following land development standards:
 - (a) The minimum lot area, minimum setbacks and maximum height required by this chapter for the wind farm and windmills shall apply, and the land remaining for accommodation of the existing principal use(s) on the lot shall also continue to comply with the minimum lot area, density and

other requirements.

- (b) The vehicular access to the equipment building shall, whenever feasible, be provided along the circulation driveways of the existing use.
- (c) The applicant shall present documentation that the owner of the property has granted an easement or other legal interest for the land for the proposed facility and that vehicular access is provided to the facility.

C. Standards.

- (1) Wind farm height. The applicant shall demonstrate that the windmills are at the minimum height required to function satisfactorily. No windmill that is taller than this minimum height shall be approved.
- (2) Parcel size; setbacks.
 - (a) Separate parcel. If the parcel on which the wind farm is a separate and distinct parcel, the zoning district minimum lot size shall apply, and in all cases, the lot shall be of such size that all required setbacks are satisfied. No windmill shall be located closer to any property line than its height plus the normal setback for the district. The setback for equipment containers, other accessory structures and guy wire anchors shall be a minimum of 30 feet.
 - (b) Lease, license or easement. If the land on which the wind farm is leased or is used by license or easement, the setback for any windmill, the support structure, equipment containers, other accessory structures, and guy wire anchors shall be a minimum of 30 feet from the line of lease, license or easement. In any case, no windmill shall be located closer to any property line (not lease, license or easement line) than its height plus the normal setback for the district.
- (3) Wind farm support structure safety. The applicant shall demonstrate that the proposed windmills are safe and the surrounding areas will not be negatively affected by structure failure, falling ice or other debris, electromagnetic fields, or radio frequency interference. All windmills shall be fitted with anti-climbing devices, as approved by manufacturers. The applicant shall submit certification from a Pennsylvania-registered professional engineer that a proposed wind farm and support structure will be designed and constructed in accord with accepted engineering practices and all requirements of any applicable construction code. Within 45 days of initial operation, the owner and/or operator of the wind farm shall provide a certification from a Pennsylvania-registered professional engineer that the wind farm and all structures comply with all applicable regulations.
- (4) Fencing. A fence may be required around windmills and other equipment, unless the design of the structures adequately provides for safety.
- (5) Landscaping. Landscaping may be required to screen as much of the wind farm ground features as possible, the fence surrounding the support structure and any other ground-level features (such as a building), and, in general, buffer

the wind farm ground features from neighboring properties. The Borough may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if the same achieves the same degree of screening as the required landscaping.

- (6) Licenses; other regulations; insurance. The applicant must demonstrate that it has obtained the required licenses from governing state and federal agencies. The applicant shall also document compliance with all applicable state and federal regulations. The applicant shall submit the name, address and emergency telephone number for the operator of the wind farm, and a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the wind farm.
- (7) Access; required parking. Access to the wind farm shall be provided by means of a public street or easement to a public street. The easement shall be a minimum of 20 feet in width and shall be improved to a width of at least 10 feet with a dust-free, all-weather surface for its entire length. If the wind farm site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, the number of required parking spaces shall equal the number of people on the largest shift.
- (8) Color and lighting; FAA and PennDOT notice. Windmills shall comply with all applicable Federal Aviation Administration (FAA) and Pennsylvania Department of Transportation Bureau of Aviation regulations. No windmill may be artificially lighted except as required by FAA requirements. The applicant shall provide a copy of the response to notice of proposed construction or alteration forms submitted to the FAA and PennDOT Bureau of Aviation.
- (9) Communications interference. The applicant shall document that the radio, television, telephone or reception of similar signals for nearby properties will not be disturbed or diminished, and this may be accomplished by remedial measures instituted by the wind farm developer.
- (10) Historic structures. A wind farm shall not be located within 500 feet of any structure listed on any public historic register.
- (11) Discontinued use. Should any wind farm or windmill cease to be used, the owner or operator or then owner of the land on which the wind farm or windmill is located shall be required to remove the same within one year from the abandonment of use. Failure to do so shall authorize the Borough to remove the facility and assess the cost of removal to the foregoing parties. The Borough may also file a municipal lien against the land to recover the costs of removal and attorneys' fees. In addition, at the time of zoning permit issuance for any windmill, the Borough shall require a financial guarantee, in a term, form and amount determined by the Borough Council with the advice of the Borough Solicitor, to guarantee the removal of the windmill.
- (12) Site plan. A full site plan shall be required for all wind farm sites, showing the wind farm, windmills, building, fencing, buffering, access, and all other items required for conditional uses by this chapter.

ARTICLE IX
Nonconformities

§ 400-47. Purpose; applicability; registration; continuation and change.

A. Purpose.

- (1) It is the purpose of this article to recognize that if, prior to the adoption of the original Dalton Borough Zoning Ordinance, as amended, reenacted and replaced, property was used for a then-lawful purpose or in a then-lawful manner which the Zoning Ordinance would render thereafter prohibited and nonconforming, such property is generally held to have acquired a vested right to continue such nonconforming use or nonconforming structure. Nevertheless, this does not preclude the Borough from regulating the change, alteration, reconstruction, reestablishment, extension, destruction and abandonment of nonconforming uses in accord with the Pennsylvania Municipalities Planning Code¹²⁵ and general case law.
- (2) It is also the purpose of this article to limit the injurious impact of nonconforming uses and/or structures on other adjacent properties within a particular district and the community as a whole, while recognizing that the change, alteration, reconstruction, reestablishment, or extension of nonconforming uses and/or structures may not be contrary to the public interest or the general purpose of this chapter when failure to allow such change, alteration, reconstruction, reestablishment, or extension would itself lead to neighborhood or district deterioration.
- (3) It is further the purpose of this article to prescribe those standards which are to be applied by the Borough in determining the reasonableness of a proposal to change, alter, reconstruct, reestablish or extend a nonconforming use. The following are regulations which shall apply.

B. Applicability. The provisions and protections of this Article IX shall apply only to those nonconforming lots, structures and uses which legally preexisted the applicable provisions of this chapter, as amended, reenacted and replaced, or which are recognized by § 400-49 or 400-50 of this Article IX. Any lot, structure or use created, constructed or established after the effective date of the original Zoning Ordinance, as amended, reenacted and replaced, which does not conform to the applicable requirements shall be considered an illegal lot, structure or use subject to the penalties prescribed by this chapter, and the said lot, structure or use shall not be entitled to any of the protections afforded to legal, preexisting nonconforming lots, structures or uses.

C. Registration. It shall be the responsibility of the party asserting a nonconformity to provide the evidence that the nonconformity is legal. A property owner may request a written statement of nonconformity from the Zoning Officer after providing sufficient evidence. The Zoning Officer may submit any application for a certificate of nonconformance to the Planning Commission for the Commission's review and recommendation with regard to the evidence of nonconformity.¹²⁶

125.Editor's Note: See 53 P.S. § 10101 et seq.

- D. Continuation and change. A lawful nonconforming lot, structure or use as defined by this chapter may be continued and may be sold and be continued by new owners. Any expansion, alteration, extension or change in a nonconformity shall only proceed in compliance with this article.

§ 400-48. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

NONCONFORMING LOT — Any lot which does not conform with the minimum width, depth and area dimensions specified for the district where such a lot is situated, such lot having been created and recorded in the office of the Lackawanna County Recorder of Deeds prior to the effective date of the original Dalton Borough Zoning Ordinance, as amended, reenacted and replaced.

NONCONFORMING STRUCTURE — A structure or part of a structure which does not comply with the applicable district limitations on structure size and location on a lot, where such structure lawfully existed prior to the enactment of the original Dalton Borough Zoning Ordinance, as amended, reenacted and replaced, and including, but not limited to, nonconforming signs.

NONCONFORMING STRUCTURE, ALTERATION OR EXPANSION — As applied to a nonconforming structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

NONCONFORMING STRUCTURE, RECONSTRUCTION — The rebuilding of a nonconforming structure damaged or destroyed by casualty to the exact or less nonconforming condition which existed prior to the casualty.

NONCONFORMING USE — A use, whether of land or of a structure, which does not comply with the applicable use provisions in this chapter or amendments hereto, where such use was lawfully in existence prior to the enactment of the original Dalton Borough Zoning Ordinance, as amended, reenacted and replaced.

NONCONFORMING USE, CHANGE — The conversion of a nonconforming use to a different use classification as enumerated on the Schedule of Uses of this chapter.

NONCONFORMING USE, EXTENSION — The expansion of a nonconforming use throughout the structure which the said use partially occupies; or the expansion of a nonconforming use onto property not already occupied by the said use.

NONCONFORMING USE, REESTABLISHMENT — The reopening or reinstitution of a nonconforming use which has been discontinued by the owner of the said use, such reopening effected prior to the abandonment of the nonconforming use as determined under the provisions of this chapter.

§ 400-49. Nonconformities under development.

For the purposes of this Article IX, a building, structure or use, legally permitted, planned and substantially under construction in compliance with existing ordinances prior to the effective date of this chapter, or any amendment hereto, and completed

within a one-year period after the effective date of this chapter or amendment hereto, shall be considered nonconforming.

§ 400-50. Nonconformities by variance.

A building, structure or use allowed by variance in a district where it is nonconforming with any regulations of this chapter, as amended, reenacted and replaced, shall be considered nonconforming for the purposes of this chapter.

§ 400-51. Normal maintenance and repair activities.

Normal maintenance and repair, such as painting, replacement of siding, and similar activities, is allowed, as well as those interior renovations which do not structurally alter the building or area or result in increased use of the building or area or a change of nonconforming, or otherwise create more incompatibility with the surrounding permitted uses. Such maintenance and repair activities shall, however, comply with all other applicable standards and permit requirements of this chapter.

§ 400-52. Changes of nonconforming uses.

- A. Conditional uses. All changes of nonconforming uses shall be considered conditional uses subject to the specific procedures and review criteria contained in Article XII of this chapter and the review factors in § 400-58 of this article. A nonconforming use may only be changed to a use of equal or less nonconformity (i.e., more-restrictive classification), as determined by the Planning Commission and Borough Council in accord with classification of the uses in the Schedule of Uses of this chapter. The general standard shall be that no change of a nonconforming use shall be permitted if such change will result in the establishment of a use which is materially different from the existing use in terms of negative effects on the community and the long-term application of this chapter to eliminate incompatible uses from specific zoning districts. For example, a change from a nonconforming retail store in R-1 District to a bank may be permitted; however, a change to a manufacturing use would not be permitted.¹²⁷
- B. Conforming changes and conversions.
 - (1) Change. A change in a nonconforming use to a conforming use shall not be considered a conditional use unless the proposed use is classified as a conditional use by the Schedule of Uses in this chapter. A change of a nonconforming use to a conforming use shall be considered an abandonment of the nonconforming use, which shall not thereafter revert to a nonconforming use.
 - (2) Conversion. The conversion of a nonconforming use to a nonconforming use of like classification shall not be considered a conditional use. For example, a nonconforming retail establishment selling groceries proposed for conversion to a shoe store would not be considered a change in nonconforming use.
- C. Other standards. All changes to nonconforming uses shall also be subject to all

127.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

other applicable standards in this chapter.

§ 400-53. Extension of nonconforming uses.

- A. Conditional uses. All extensions of nonconforming uses into more area of a structure or onto more area of a property shall be considered conditional uses subject to the specific procedures and review criteria contained in Article XII of this chapter and the review factors in § 400-58 of this article.
- B. Extension onto other properties of record in the same ownership. A nonconforming use may only be extended onto a new property of record if that property is contiguous to the existing location; the properties were both under the same ownership as of the effective date of this chapter, as amended; the owner has clearly exhausted the alternatives available for expansion on the existing property; and the use is not one which has been altogether prohibited as a new use under this chapter.
- C. Extension limitation. A nonconforming use shall not be extended more than 25% beyond the area of land or structure legally occupied by the use as it existed at the time of the adoption of the initial Dalton Borough Zoning Ordinance.
- D. Prohibited extensions. Should the use proposed for extension be judged by the Borough to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this chapter, the requested extension shall be denied. The Council shall consider past operating performance in making its decision.

§ 400-54. Reconstruction.

- A. Time limit. If any nonconforming structure or use is damaged it may be restored or reconstructed to its preexisting condition of nonconformity, provided the application for a building permit is submitted within 24 months of the date of the casualty.
- B. Procedure – permits. All applicable permits for the reconstruction of a nonconforming use shall be required. Such reconstruction shall be considered a conditional use if the reconstruction involves a change or extension of use as regulated by §§ 400-52 and 400-53 of this chapter, respectively.
- C. Razing; removal. If any nonconforming structure or part of such structure is razed or removed, its nonconformity it shall be replaced only in full conformity with this chapter.

§ 400-55. Abandonment and reestablishment of nonconformities.

Unless extended in accord with this § 400-55, if a nonconforming use of land or structure ceases operations, is discontinued, is vacated or is otherwise abandoned for a period of 12 months or more, then this shall be deemed to be an intent to abandon such nonconforming use, and any subsequent use of the land or structure shall be for conforming purposes only, and said use shall in all respects conform to the applicable provisions of this chapter. The Zoning Officer may notify in writing the title owner of the land and/or structure that the twelve-month period has expired. A change of a nonconforming use to a conforming use shall be considered an abandonment of the

nonconforming use, which shall not thereafter revert to a nonconforming use.

§ 400-56. Alterations and expansions of nonconforming structures.

- A. Alterations. The alteration or expansion of nonconforming structures shall be permitted only in accord with this § 400-56.
- B. Procedure – permits. All applicable permits for the alteration or expansion of a nonconforming structure shall be required. Such alteration or expansion shall be considered a conditional use if the alteration or expansion involves a change or extension of a nonconforming use as regulated by §§ 400-52 and 400-53 of this chapter, respectively.
- C. Nonconforming setbacks. Should a single- or two-family dwelling have a lawful nonconforming front, side or rear building setback, the structure may be altered to increase the height above such setback or to extend other portions of the building up to such nonconforming setback but not to exceed a distance of 50% of the existing nonconforming part of the structure. However, the height of any such extension shall not exceed the lesser of the existing height of the nonconforming structure or the applicable district maximum height.
- D. Increase in area or bulk nonconformity. In the case where a proposed alteration or expansion of a nonconforming structure will result in an increased nonconformity of setback, height, lot coverage or other area or bulk standard, a variance shall be required from the Zoning Hearing Board.

§ 400-57. Use of nonconforming lots of record.

- A. Single-family dwelling. A single-family dwelling may be erected or expanded on any lawful nonconforming lot of record in any district, provided:
 - (1) Adjoining property. The lot owner does not own adjoining property all or part of which can be combined to make the lot more conforming.
 - (2) Setbacks. Setbacks may be reduced in the same proportion as the ratio of the nonconforming lot size to the lot size required for the district, provided no front yard is reduced to less than 20 feet and no side or rear yard is reduced to less than 10 feet.
 - (3) Other standards. All other applicable standards in this chapter are satisfied.
 - (4) Water supply. An adequate water supply is provided in accord with Borough and other applicable regulations.
 - (5) Sewage disposal. Sewage disposal is provided in accord with applicable Borough and PA DEP requirements.
- B. Commercial uses. A commercial use may be developed on any lawfully existing nonconforming lot where permitted by the Schedule of Uses, provided:
 - (1) Adjoining property. The lot owner does not own adjoining property all or part of which can be combined to make the lot more conforming.

- (2) Setbacks. All setbacks normally required in the district are maintained.
- (3) Lot size requirement. This chapter does not require a lot size for the specific use which is greater than the lot size for the district.
- (4) Water supply. An adequate water supply is provided in accord with Borough and other applicable regulations.
- (5) Other standards. All other applicable standards in this chapter are satisfied.
- (6) Sewage disposal. Sewage disposal is provided in accord with applicable Borough and PA DEP requirements.

§ 400-58. Review factors.

In addition to other applicable standards, the Borough shall consider any nonconformity conditional-use application in terms of the effect on the following factors:

- A. Traffic generation.
- B. Noise, dust, fumes, gases, odor, glare, vibration, fire and explosion hazards and other nuisances.
- C. Amount and nature of outdoor storage.
- D. Hours of operation.
- E. Compatibility with the character of the surrounding neighborhood.
- F. Potential of the expansion to reduce existing congestion and alleviate parking shortages by improved site design, addition of parking and improved loading areas.

ARTICLE X

Ownership and Maintenance of Open Land, Recreation Land and Common Facilities**§ 400-59. Applicability.**

This Article X shall apply to any development which involves the ownership and maintenance of conservation open space, open land, recreation land, or common facilities (referred to as "common area" in this article) as required by this chapter and Chapter 300, Subdivision and Land Development.

§ 400-60. Purpose.

The requirements of this Article X are intended to assure in perpetuity the ownership, use and maintenance of common areas. The general principle shall be to assign ownership and maintenance responsibility to that entity which is best suited for the same and which will allocate any associated costs to the individuals which directly benefit from the use of the common area.

§ 400-61. Plan and legal documents.

The developer shall submit a plan and proposed legal documents for the purpose of dedicating, in perpetuity, the use, ownership and maintenance of the approved common area. The plan shall be approved by the Borough Council with the recommendation of the Borough Solicitor. The provisions of the approved plan shall be incorporated into a development agreement with the Borough, deed covenants and restrictions or other legal documents which will effect the plan and which can be enforced by the Borough.

§ 400-62. Use restriction.

The use of any common area shall be limited to those uses which are specifically permitted or required by the applicable sections of this chapter and Chapter 300, Subdivision and Land Development.

§ 400-63. Development plan designations.

The subdivision/land development plan which will be recorded following final approval of the development shall clearly show all common areas and specifically note the use, ownership and maintenance responsibility of the same. Reference to the legal document(s) governing the use, ownership and maintenance of common areas shall be noted on the plan. The plan shall also contain the following statement: "Open land, recreation land, and common facilities shall not be sold separately or be further subdivided or developed, nor shall such land be used for density for any other development."

§ 400-64. Methods for use dedication and common area ownership and maintenance.

- A. The use of common areas and common area ownership and maintenance shall be addressed by one or a combination of the methods which follow. In any case, the developer shall document to the satisfaction of the Borough Council that the chosen

method(s) will preserve the common area use rights established in accord with this article and provide for the perpetual ownership and maintenance of all open land, recreation land, and common facilities. All methods shall establish a mechanism for the Borough to effect the use dedication and require operation and maintenance of common areas should the means established by the developer fail to provide the same.

- B. All methods for use dedication and common area ownership and maintenance, and any combination of methods, and any change in method which may be proposed by the ownership and maintenance entity, shall be subject to the approval of the Borough Council. Operation and maintenance provisions shall include, but not be limited to, capital budgeting for repair and/or replacement of common facilities, working capital, operating expenses, casualty and liability insurance, and contingencies.
- C. Property owners' association or condominium agreements. All common areas may be owned and maintained by a property owners' association (POA) or condominium agreements (CA), including all lot owners in the development, provided:
 - (1) The POA/CA is established by the developer as a nonprofit corporation for the express purpose of ownership and maintenance of the common area or as otherwise may be required by state statute.
 - (2) Participation in the POA/CA is mandatory for all lot owners.
 - (3) Provision is made for the maintenance of common areas during the lot sale period and the orderly transition of responsibility from the developer to the POA.
 - (4) The POA/CA is empowered to assess POA/CA members to fund the administration of the POA/CA and other costs associated with the common area responsibilities.
- D. Transfer to a private conservation organization. In the case of open land and recreation land, the landowner may transfer fee simple title to the said areas, or parts thereof, to a private, nonprofit organization among whose purposes is the conservation of open land and/or natural resources, provided that:
 - (1) The deed contains the necessary covenants and restrictions in favor of the Borough to effect the use dedication and common area ownership and maintenance standards of this article and this chapter.
 - (2) The organization proposed is a bona fide, operating and stable conservation organization with a perpetual existence, as approved by the Borough Council.
 - (3) The conveyance of title contains the necessary provisions for proper retransfer or reversion should the organization be unable to continue to execute the provisions of title.
 - (4) A maintenance agreement between the developer, organization and Borough is executed to the satisfaction of the Borough Council.
- E. Deed-restricted private ownership. On privately held lands used for agriculture,

forestry enterprises and other uses permitted on open land in accord with this chapter, deed restrictions may be used to preserve open land, provided such restrictions include a conservation easement in favor of the Borough, with provisions for reversion to the Borough, POA or trustee holding the remainder of the common area. Title to such restricted lands may be transferred to other parties for use as restricted by the deed.

- F. Deed or deeds of trust. The landowner may provide, as approved by the Borough Council, for the use, ownership and maintenance of common area by establishing a trust for the same via a deed or deeds. The trustee shall be empowered to levy and collect assessments from the property owners for the operation and maintenance of the development.
- G. Conservation easements held by the Borough. In the case of open lands and recreation lands, the Borough may, but shall not be required to, accept title to conservation easements on any such lands. In such cases, the land remains in the ownership of an individual, POA or condominium, while the development rights are held by the Borough. The lands may be used for agriculture, forestry enterprises and other uses permitted on open land in accord with this chapter, and title to such lands may be transferred to other parties for use as restricted by the conservation easement.
- H. Fee simple and/or easement dedication to the Borough. In the case of open lands or recreation lands, the Borough may, but shall not be required to, accept in fee the title to any such lands or any interests (such as development rights or conservation easements) therein for public use and maintenance, provided:
 - (1) There is no consideration paid by the Borough.
 - (2) Such land is freely accessible to the public.
 - (3) The Borough agrees to and has access to maintain such lands.

§ 400-65. Failure to preserve dedication of use and operation and maintenance of common area.

Should the method established for the dedication of use and operation and maintenance of common area fail to do so in reasonable order and condition in accord with the approved development plan, the Borough Council shall have the right and authority to take all necessary legal action to effect such use dedication, operation and maintenance. The action of the Borough Council shall be in accord with the following:

- A. Notice. The Borough Council shall serve written notice on assigned entity or the property owners in the development, setting forth the details of the failure of the entity with regard to use dedication and operation and maintenance of common areas.
- B. Correction of deficiencies. The notice shall include a demand that the deficiencies be corrected in a reasonable period of time, which shall be stated in the notice.
- C. Public hearing. A public hearing shall be conducted subsequent to the notice and shall be advertised in accord with the definition of "public notice" contained in this

chapter. At such hearing, the Borough Council may modify the terms of the original notice as to the deficiencies and may extend the time for correction of the deficiencies.

- D. Failure to correct. In the event the deficiencies in the notice, as may have been modified at the public hearing, are not corrected in accord with the established time period, the Borough Council may enter upon the common area and maintain the same and/or correct the deficiencies. The Borough Council shall continue such action for such time as may be necessary to correct the deficiencies. Said action shall not constitute a taking or dedication of any common areas, nor vest in the public the right to use any common area.
- E. Reinstatement of responsibility. The responsibility of operation and maintenance shall not be reinstated to the assigned entity until such time as the entity has demonstrated to the Borough Council that the proper steps have been effected to modify the terms of use dedication, operation and/or maintenance, and/or to reorganize or replace the responsible entity, so that use dedication and operation and maintenance established by the approved development plan will be assured.
- F. Appeal. Any party to the action of the Borough Council may appeal such action to court as provided for zoning appeals in the Pennsylvania Municipalities Planning Code, as amended.¹²⁸
- G. Public costs. The costs of the preservation of use dedication and the cost maintenance and operation of any open land conducted by the Borough in accord with this article, and including any administrative and legal costs, shall be assessed ratably against the properties in the subject development which have a right of enjoyment and/or use of the common areas. The assessment shall be made a lien on the properties, and the Borough Council shall, at the time of the notice in § 400-65A above, file the required notice of lien against the properties.

¹²⁸ Editor's Note: See 53 P.S. § 10101 et seq.

ARTICLE XI
Signs

§ 400-66. Administration.

- A. Purpose. The purpose of this Article XI is to establish standards for the regulation of signs within Dalton Borough in order to safeguard the public interest and:
- (1) To protect property values within Dalton Borough;
 - (2) To preserve the beauty and the unique character of Dalton Borough;
 - (3) To promote and aid in the tourist industry of Dalton Borough;
 - (4) To protect the general public from damage and injury which may be caused by the faulty construction of signs;
 - (5) To protect pedestrians and motorists of Dalton Borough from damage or injury caused or partially attributable to the distractions and obstructions caused by improperly situated signs;
 - (6) To promote the public safety, welfare, convenience and enjoyment of travel and the free flow of traffic within Dalton Borough;
 - (7) To assure that signage is clear and provides the essential identity or direction to facilities in the community; and
 - (8) To enable the fair and consistent enforcement of the sign restrictions throughout Dalton Borough.
- B. Applicability – effect. A sign may be erected, placed, established, painted, created or maintained in the Borough only in conformance with the standards, procedures, exceptions and other requirements of this chapter. The effect of this chapter as more specifically set forth herein is:
- (1) To establish a permit system to allow a variety of types of signs in the various zones, subject to the standards and the permit procedures of this chapter;
 - (2) To allow certain signs that are small, unobtrusive and incidental to the principal use of the respective lots on which they are located, subject to the substantive requirements of this chapter, but without a requirement for permits;
 - (3) To provide for temporary signs without commercial messages in limited circumstances in the public right-of-way; and
 - (4) To prohibit all signs not expressly permitted by this chapter.
- C. Requirement of conformity. No sign for which a permit is issued after the effective date of this chapter may be placed or maintained in Dalton Borough except as provided herein. All signs maintained contrary to the provisions of this chapter are declared to be nuisances and, as such, may be abated as provided by law.

§ 400-67. Definitions and interpretation.

Words and phrases used in this article shall have the meanings set forth in this section. Words and phrases not defined in this section but defined in Article III shall be given the meanings set forth in said article. Principles for computing sign area and sign height are contained in this section. All other words and phrases shall be given their common, ordinary meaning, unless the context clearly requires otherwise. Section headings or captions are for reference purposes only and shall not be used in the interpretation of this chapter.

ADVERTISING SIGN, OFF-PREMISES — A sign which conveys a commercial or noncommercial message unrelated to the activity conducted on the lot where the sign is located or a sign which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing elsewhere than on the same lot where the sign is located. A structure intended to support or contain such a sign shall also be considered an off-premises advertising sign.

ANIMATION — The movement or the optical illusion of movement of any part of the sign structure, design or pictorial segment, including the movement of any illumination or the flashing or varying of light intensity; the automatic changing of all or any part of the facing of a sign; the movement of a sign set in motion by the atmosphere. Time-and-temperature devices shall be considered animated signs.

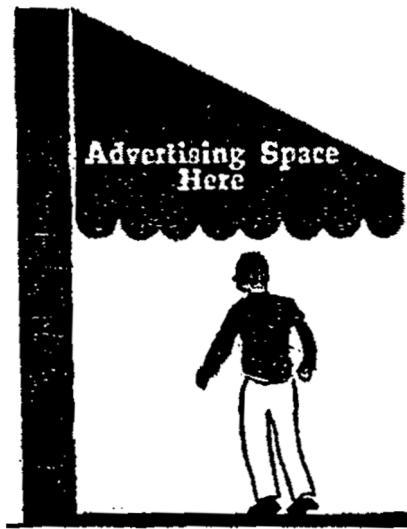
APPLICANT — A person or entity who applies for a sign permit in accordance with the provisions of this chapter.

AREA OF SIGN — In the case of individual letters used as a sign, the area is 90% of the area enclosed within the smallest regular geometric figure needed to completely encompass all letters, insignias or symbols, except as otherwise provided herein. For signs other than individual letters, words, insignias or symbols, the area is the total area of the facing or the total area within the outer edge of any existing border of the sign.

ATTRACTION BOARD — See "changeable panel sign."

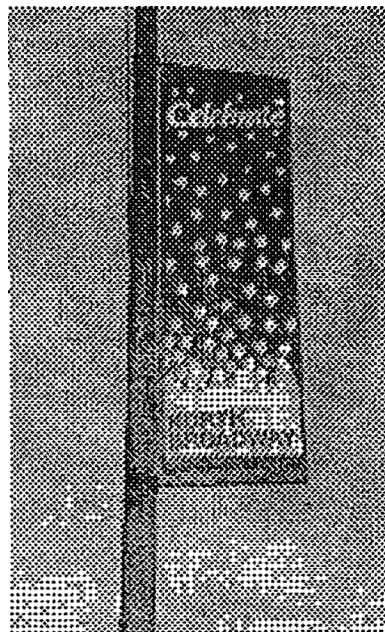
AUTOMATED TELLER MACHINE SIGN — Any sign located on or architecturally associated with the exterior face of an automated teller machine.

AWNING SIGN — Signs which are placed on or integrated into fabric or other material canopies which are mounted on the exterior of a building.



Awning Sign

BANNER SIGN — Any sign of lightweight fabric or similar material that is permanently mounted to a pole or building by a permanent frame at one or more edges with no enclosing framework. National flags, state or municipal flags of any institution or business shall not be considered banners.



Banner Sign

BILLBOARD — A type of off-premises advertising sign which conveys a commercial or noncommercial message unrelated to the activity conducted on the lot where the sign is located, or a sign which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing elsewhere than on the same lot where the sign is located. A structure intended to support or contain such a sign shall also be

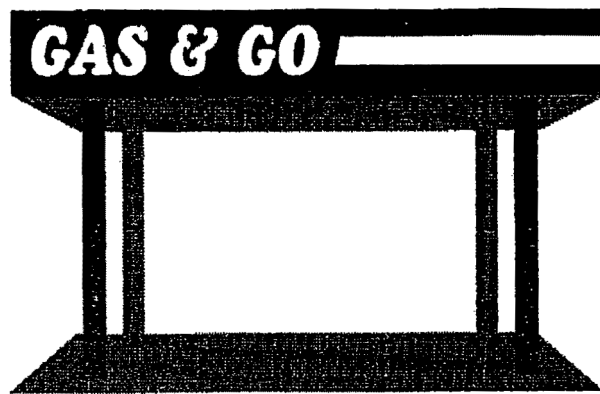
considered a billboard.

BUSINESS — For the purposes of this Article XI, "business" shall mean any approved nonresidential use, including commercial, manufacturing and industrial enterprises; public buildings and uses such as public schools, parks, civic centers, municipal buildings; and semipublic buildings and uses, such as churches, firehouses, ambulance buildings, private schools, and libraries.

BUSINESS NAME — The name by which a business is commonly recognized and used by the applicant. The applicant shall provide stationary or other supporting documents illustrating the use of the business name or verification of the official business license or tax name. Slogans or product information shall not be considered as the business name.

CABINET — A three-dimensional structure which includes a frame, borders and sign panel face and may include internal lighting upon which the sign letters and logos are placed or etched and which is architecturally integrated with the building.

CANOPY SIGN — Any sign that is a part of or attached to an awning, canopy or other fabric, plastic or structural protective cover over a door, entrance, window or outdoor service area. A marquee is not a canopy.



Canopy Sign on Freestanding Canopy

CHANGEABLE PANEL SIGN — A sign designed to allow its informational content to be changed or altered.



Changeable Panel Sign

COMMERCIAL MESSAGE — Any sign wording, logo or other representations that, directly or indirectly, names, advertises or calls attention to a business, product, service or other commercial activity.

COMPUTATION OF AREA IN INDIVIDUAL SIGNS — The area of sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof, that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing or decorative fence or wall when such fence or wall otherwise meets zoning ordinance regulations and is clearly incidental to the display itself.

COMPUTATION OF AREA OF MULTIFACED SIGNS — The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point. When two identical sign faces are placed back to back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than 42 inches apart, the sign area shall be computed by the measurement of one of the faces.

COMPUTATION OF HEIGHT — The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of: (1) existing grade prior to construction; or (2) the newly established grade after construction, exclusive of any filling, berming, mounding or excavating solely for the purpose of locating the sign. In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the zone lot, whichever is lower.

CONSTRUCTION SIGN — A temporary sign identifying an architect, contractor,

subcontractor, and/or material supplier participating in construction on the property on which the sign is located.

CONTRACTOR OR SUBCONTRACTOR SIGNS — The temporary signs which identify the contractor or subcontractor engaged in the construction, reconstruction or repair of a building or buildings on a lot or parcel or property.

DEVELOPMENT SIGN — A temporary sign used to identify an approved future development.

DIRECTORY SIGN — A sign which provides a listing of the names of businesses, activities, addresses, locations, uses or places within a building or complex of buildings for the purposes of giving directions, instruction or facility information and which may contain the name and logo of an establishment but no advertising copy.

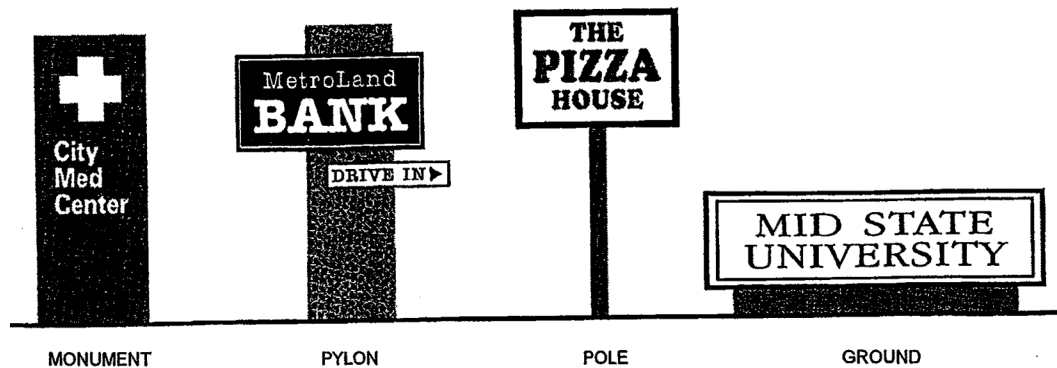


Directory Sign

DOUBLE-FACED SIGN — A sign with two faces, essentially back to back.

FLAG — Any fabric, banner or bunting containing distinctive colors, patterns or symbols, used as a symbol of a government, political subdivision, or other entity, which is mounted on a pole, cable or rope at one end.

FREESTANDING SIGN — A sign supported permanently upon the ground by poles or braces and that is not attached to any building.



Common Freestanding Sign Types

GOVERNMENT SIGN — Any temporary or permanent sign erected and maintained by the Borough, county, state or federal government for traffic direction or for designation of or any school, hospital, historical site, or public service, property or facility.

GRAND OPENING — The introduction, promotion or announcement of a new business, store, shopping center or office, or the announcement, introduction or promotion of an established business changing ownership. A business qualifies for a grand opening sign when it has been closed to the public for a period of 30 days.

GROUND SIGN — A freestanding sign that is architecturally integrated with the building with individually mounted letters and/or logos only. This sign shall be built with continuous background surface built from the ground up.

HEIGHT — The vertical distance measured from the highest point of the sign, excluding decorative embellishments, to the grade of the adjacent street or the surface grade beneath the sign, whichever is less.

ILLEGAL SIGN — Any sign erected without first obtaining an approved sign permit, other than nonconforming signs, and which does not meet the requirements of this chapter.

ILLUMINATED SIGN — A sign with an artificial light source incorporated internally or externally for the purpose of illuminating the sign.

INCIDENTAL SIGN — A sign, generally informational, that has a purpose secondary to the use of the zone lot on which it is located, such as "no parking," "entrance," "loading only," "telephone," and other similar directives. No sign with a commercial message legible from a position off the zone lot on which the sign is located shall be considered incidental.



Incidental Sign

INDIRECT ILLUMINATION — A source of external illumination located away from the sign, but which is itself not visible to persons viewing the sign from any street, sidewalk or adjacent property.

INDIVIDUAL LETTERS — A cut-out or etched letter or logo which is individually placed on a landscape, screen wall, building wall or ground sign.

INTERNAL ILLUMINATION — A source of illumination entirely within the sign which makes the contents of the sign visible at night by means of the light being transmitted through a translucent material but wherein the source of illumination is not visible.

INTERNAL/INDIRECT ILLUMINATION — A source of illumination entirely within an individual letter, cabinet or structure, which makes the sign visible at night by means of lighting the background upon which the individual letter is mounted. The letters are opaque and thus are silhouetted against the background. The source of illumination is not visible.

LOGO — A graphic symbol representing an activity, use or business. Permitted logos shall be registered trademarks or symbols commonly used by the applicant and may include graphic designs in addition to lettering. The applicant shall provide stationary or other supporting documents illustrating the use of the logo.

MAINTENANCE — The replacing or repairing of a part or portion of a sign necessitated by ordinary wear, tear or damage beyond the control of the owner or the reprinting of existing copy.

MARQUEE — Any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather.

MONUMENT SIGN — A freestanding cabinet or panel sign mounted on or within a base (above grade), which is detached from any building.

MULTIPLE-TENANT COMMERCIAL BUILDING — A commercial development in which there exists two or more separate commercial activities, in which there are appurtenant shared facilities (such as parking or pedestrian mall), and which is designed to provide a single area in which the public can obtain varied products and services. Distinguishing characteristics of a multiple-tenant commercial building may, but need not, include common ownership of the real property upon which the center is located, common-wall construction, and multiple-occupant commercial use of a single structure.

NAMEPLATE — A small sign which identifies a resident's or home's name and address or the name of a farm, ranch or commercial stable. Such signs may be shingle-, building wall- or archway-mounted signs.

NONCONFORMING SIGN — Any sign which is not allowed under this chapter, but which, when first constructed before this chapter was in effect and for which a sign permit was issued, was legally allowed by the Borough.

OWNER — A person recorded as such on official records. For the purpose of this chapter, the owner of property on which a sign is located is presumed to be the owner of the sign unless facts to the contrary are officially recorded or otherwise brought to the attention of the Zoning Officer.

PANEL — A two-dimensional visual background behind the sign letters and logos, which is visually separated from the mounting upon which the sign letters and logos are placed by the presence of a border, different colors, different materials, or other technique of visual framing around the letters or logos.

PARAPET — That portion of a building exterior wall projecting above the plate line of the building.

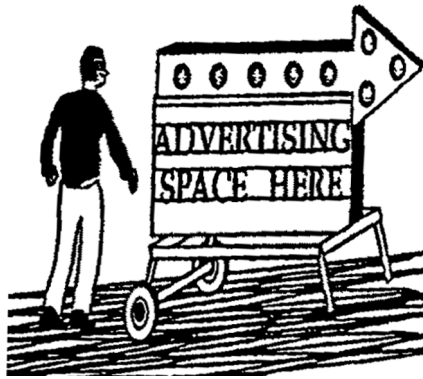
PENNANT — Any lightweight plastic, fabric or other material, whether or not containing a message of any kind, suspended from a rope, wire or string, usually in series, designed to move in the wind.

PERMANENT SIGN — Any sign which is intended to be and is constructed as to be in lasting and enduring condition, remaining unchanged in character, condition (beyond normal wear) and position, and in a permanent manner affixed to the ground, wall or building, provided the sign is listed as a permanent sign in the ordinance.

PLATE LINE — The point at which any part of the main roof structure first touches or bears upon an external wall.

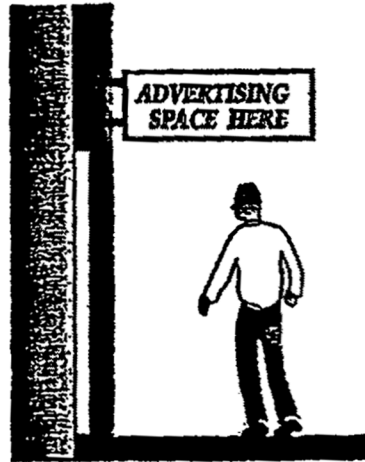
POLITICAL SIGN — A temporary sign which supports candidates for office or urges action on any other matter on the ballot of primary, general and special elections.

PORTABLE SIGN — Any sign not permanently attached to the ground or other permanent structure or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels, signs converted to A- or T-frames, menu and sandwich board signs, balloons used as signs, umbrellas used for advertising and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.



Portable Sign

PROJECTING SIGN — Any sign affixed to a building wall in such a manner that its leading edge extends more than six inches beyond the surface of such building or wall.



Projecting Sign

PUBLIC PROPERTY — Unless otherwise expressly provided, "public property" means any and all real or personal property over which the Borough or other governmental entity has or may exercise control, whether or not the government owns the property in fee, including sidewalks, rights-of-ways and improved or unimproved land of any kind and all property appurtenant to it.

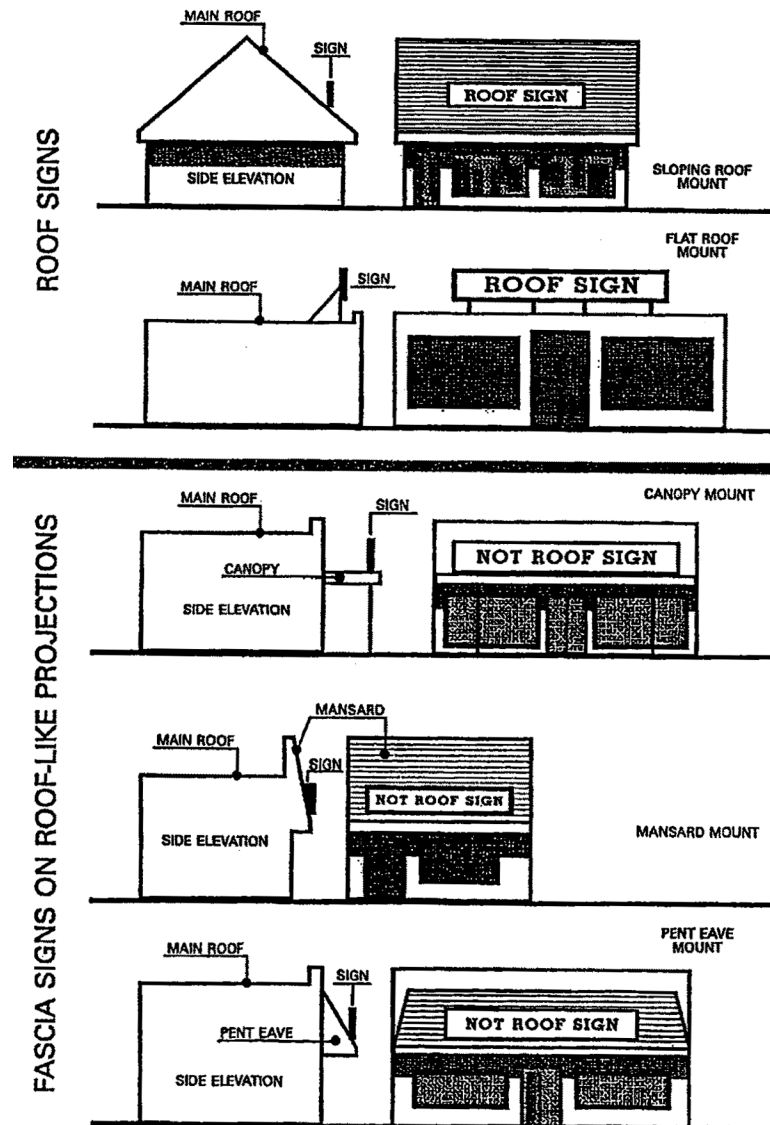
REAL ESTATE SIGN — A temporary sign advertising the real estate upon which the sign is located as being for rent, lease or sale.

RIGHT-OF-WAY — No commercial sign shall be erected so as to project beyond a property line, over a public sidewalk or over or within a public right-of-way.

ROOFLINE — The uppermost line of the roof of a building or, in the case of an extended facade or parapet, the uppermost point of said facade or parapet.

ROOF SIGN — Any sign mounted on the main roof portion of a building or on the topmost edge of a parapet wall of a building and which is wholly or partially supported by such building. Signs mounted on mansard facades or pent eaves and architectural

projections such as canopies or marquees shall not be considered to be roof signs. See the following illustration for example of roof signs, and comparison of differences between roof and fascia signs.



Comparison – Roof and Fascia Signs

SHINGLE SIGN — A sign suspended from a roof overhang of a covered porch, walkway or horizontal plane surface which identifies the tenant of the adjoining space.

SIGN — Any device for visual communication which is used or is intended to attract the attention of the public with a purpose of identifying, when the display of the device is visible beyond the boundaries of the public or private property upon which the display is made. The term "sign" shall not include any flag or badge or insignia of the United States, State of Pennsylvania, Lackawanna County, Dalton Borough, or official historic plaques of any governmental jurisdiction or agency.

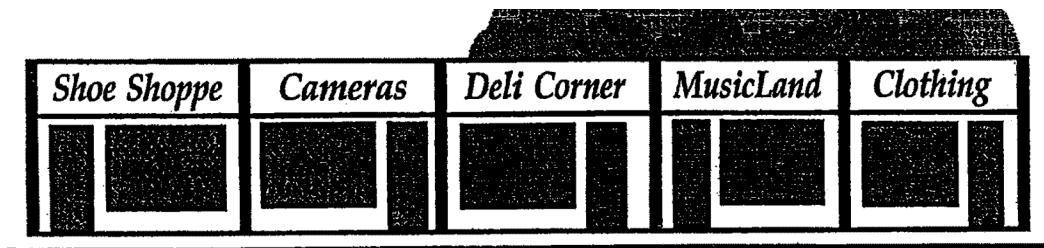
SIGN WALL — Any surface (excluding windows) of a building within 25° vertical.

SPECIAL EVENT — A promotional event, such as, but not limited to, grand openings, bazaars, street fairs, shows, exhibitions, sporting events, runs, bicycling events, and block parties. This does not include sidewalk sales occurring on private property where merchandise normally sold indoors is transferred from indoors to outdoors for sale.

TEMPORARY SIGN — Any sign, banner, pennant or valance of advertising display constructed of cloth, canvas, light fabric, cardboard, plastic, wallboard or other like materials, with or without frames; or any sign not permanently attached to the ground, wall or building.

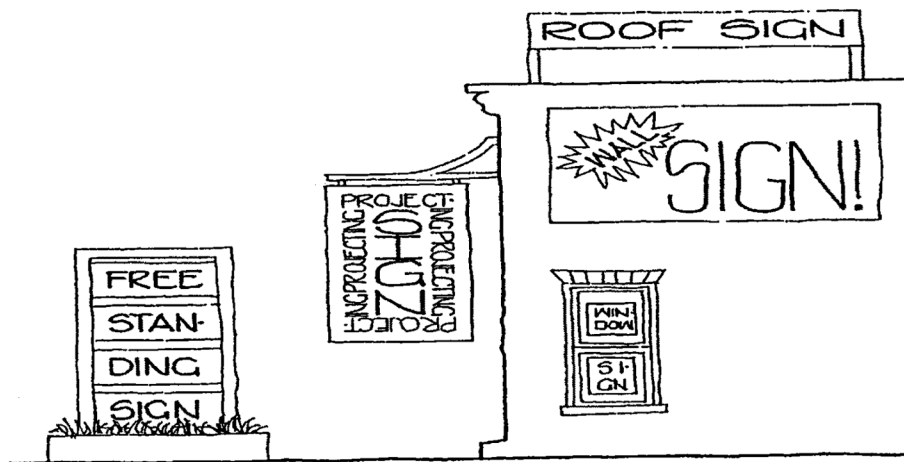
TRAFFIC DIRECTIONAL SIGN — Signs used at driveways to improve public safety and to enhance public access to the site from public streets, which provides information to assist the operators of vehicles in the flow of traffic. Such signs may use names, logos or symbols of buildings, businesses, activities, uses or places as a means of direction.

WALL SIGN — Any sign attached parallel to, but within six inches of, a wall; painted on the wall surface of; or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building; and which displays only one sign surface.



Wall Signs

WINDOW SIGN — Any poster, cut-out letters, painted text or graphics, or other text or visual presentation affixed to or placed behind a window pane, which is intended to be read from the exterior of the building.



Sign Comparison

§ 400-68. Procedures.¹²⁹

The procedures included in this § 400-68 shall apply to all signs requiring permits. In addition to the information required by this section, a master sign plan shall be prepared for approval by the Borough in accord with § 400-28.

- A. Requirement of permit. A sign permit shall be required before the erection, re-erection, construction, alteration, placing or installation of all signs regulated by this chapter. However, a permit shall not be required for the following signs and actions; provided, however, that such signs shall be subject to any and all applicable provisions of this chapter.
 - (1) Exempt signs as specified in § 400-69B.
 - (2) Real estate, temporary construction and contractor signs.
 - (3) Routine maintenance or changing of the parts or copy of a sign, provided that the maintenance or change of parts does not alter the surface area, height or otherwise render the sign nonconforming. (See § 400-69D.)
- B. Permit application. Applications for sign permits shall be submitted to the Zoning Officer and shall, at a minimum, contain or have attached thereto the information listed in this section. The applicant shall pay the required application fee at the time when the sign application is filed. Two copies of plans and specifications shall be submitted with each application. One copy shall be returned to the applicant at the time the permit is granted. The plans shall include complete details about the size of the sign, the method of attachment or support, locations and materials to be used, and the name, address and profession of the person designing the plans and specifications. If the Zoning Officer determines that the sign will be subject to excessive stresses, additional data shall be required, showing that supporting surfaces and other members of an existing building to which the sign is to be attached are in good condition and are adequately strong to support the load, including the proposed sign.
 - (1) The names, addresses and telephone numbers of the applicant, the owner of the property on which the sign is to be erected or affixed, the owner of the sign, and the person to be erecting or affixing the sign.
 - (2) The location of the building, structure or zoning lot on which the sign is to be erected or affixed.
 - (3) A sketch plan of the property involved, showing accurate placement thereon of the proposed sign.
 - (4) Two blueprints or ink drawings of the plans and specifications of the sign to be erected or affixed and method of construction and attachment to the building or in the ground. Such plans and specifications shall include details of dimensions, color, materials and weight.
 - (5) If required by the Zoning Officer, a copy of stress sheets and calculations prepared by or approved by a registered structural engineer, licensed by the

129. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

State of Pennsylvania, showing that the sign is designed for dead load and wind pressure in any direction in the amount required by this and all other applicable ordinances of the Borough.

- (6) The written consent of the owner of the building, structure or property on which the sign is to be erected or affixed.
 - (7) Such other information as the Zoning Officer may require to determine full compliance with this and other applicable ordinances of the Borough.
- C. Issuance of permits. Upon the filing of an application for a sign permit, the Zoning Officer shall examine the plans, specifications and other submitted data and the premises upon which the sign is proposed to be erected or affixed. If it appears that the proposed sign is in compliance with all the requirements of this chapter and other applicable ordinances of the Borough and if the appropriate permit fee has been paid, the Zoning Officer shall issue a permit for the proposed sign.
- D. Expiration. If the work authorized under a sign permit has not been completed within 90 days after the date of issuance, the permit shall become null and void, unless otherwise extended by the Zoning Officer for a single additional ninety-day period.
- E. Permit fees. Each sign required by this chapter requiring a sign permit shall pay a fee as established pursuant to a resolution duly adopted by the Borough Council.

§ 400-69. General requirements.

- A. Prohibited signs. All signs not expressly permitted or exempted under this chapter from regulation are prohibited in the Borough. Such prohibited signs include, but are not limited to, the following:
- (1) A-frame or sandwich board signs. A-frame or sandwich board and sidewalk or curb signs, except as a temporary sign as provided for in § 400-70 of this chapter.
 - (2) Light strings, banners, pennants and balloons. Strings of lights not permanently mounted to a rigid background, except those exempt under § 400-69B, banners, pennants, streamers, balloons and other inflatable figures, except as a temporary sign as provided for in § 400-70 of this chapter.
 - (3) Animated, moving and flashing signs. Signs which flash, revolve, rotate, swing, undulate or move by any means or otherwise attract attention through the movement or flashing of parts, including automatic, electronically controlled copy changes, or through the impression of movement or flashing, except for time-and-temperature indicators whose movement is either digital or analog and flags as permitted by this chapter.
 - (4) Portable and wheeled signs. Portable and wheeled signs, except as a temporary sign, as provided for in § 400-70 of this chapter.
 - (5) Signs on parked vehicles. Signs placed on or affixed to vehicles and/or trailers which are parked on a public right-of-way, public property or private property, so as to be visible from a public right-of-way, where the apparent purpose is to

advertise a product or direct people to a business, organization or activity.

- (6) Signs on utility poles or trees. Signs which are attached or otherwise affixed to utility poles or trees or other vegetation.
 - (7) Signs which imitate traffic control devices. Signs which imitate, interfere with, obstruct the view of, or can be confused with any authorized traffic control sign, signal or other device.
 - (8) Emissions. No sign shall be permitted to emit any sound, odor or visible matter such as smoke.
- B. Signs requiring no permits. The following signs are hereby exempt from the zoning permit provisions of this chapter, excepting for such instances where any sign listed herein is found to be unsafe or unlawful as provided for in other sections of this chapter.
- (1) Civic and religious. Civic and religious organization signs indicating only the organization insignia, name, meeting place and time. Such signs shall not exceed two square feet for each exposed surface area.
 - (2) Directional or instructional signs. Signs, not exceeding four feet in aggregate gross surface area, which provide direction or instruction to guide persons to facilities intended to serve the public, providing that such signs contain no advertising of any kind. Such signs include those identifying restrooms, public telephones, public walkways, affiliation with motor clubs, acceptance of designated credit cards, and other similar signs providing direction or instruction to persons using a facility, but not including those signs accessory to parking areas. Advertising material of any kind is strictly prohibited on directional and instructional signs.
 - (3) Noncommercial signs. Flags, emblems and insignia of political, professional, religious, educational or fraternal organizations, providing that such flags, emblems and insignia are displayed for noncommercial purpose.
 - (4) Governmental signs. Governmental signs for control of traffic and other regulatory purposes, street signs, warning signs, railroad crossing signs, and signs of public service companies indicating danger and aids to services or safety, which are erected by or at the order of a public officer or employee in the performance of the officer's or employee's duties.
 - (5) Holiday decorations. Signs or other materials temporarily displayed on traditionally accepted civic, patriotic or religious holidays, related to observance of the civic, patriotic or religious holiday.
 - (6) Interior signs. Signs which are fully located within the interior of any building or stadium, or within an enclosed lobby or court of any building, and signs located within the inner or outer lobby court or entrance of any theater.
 - (7) Memorial signs. Memorial plaques or tablets, grave markers, statutory or other remembrances of persons or events that are noncommercial in nature.
 - (8) Name and address plates. Wall signs, one per street frontage and not exceeding

1 1/2 square feet in surface area, indicating the name of the occupant, the address of the premises, and identification of any legal business or operation which may exist at the premises.

- (9) "No trespassing," "no hunting," "no fishing," "no dumping," "no parking," "no towing," and other similar signs. "No trespassing," "no hunting," "no fishing," "no dumping," "no parking," "no towing," and other similar signs (as set forth in Title 75 of the Pennsylvania Vehicle Code and its regulations and as set forth in Title 18 of the Pennsylvania Crimes Code and its regulations) not exceeding two square feet in gross surface area for each exposed face nor exceeding an aggregate gross surface area of four square feet.
- (10) Parking lot directional and instructional signs.
 - (a) Directional signs. Signs designating parking area entrances and exits, limited to one sign for each entrance and/or exit and not exceeding four square feet in gross surface area for each exposed face. Parking lot directional signs shall not project higher than five feet in height, as measured from the established grade of the parking area to which such signs are accessory.
 - (b) Instructional signs. Signs designating the conditions of use or identity of parking areas and not exceeding eight square feet in gross surface area for each exposed face nor exceeding an aggregate gross surface area of 16 square feet. Parking lot instructional signs shall not project higher than 10 feet for wall signs and seven feet for ground signs, as measured from the established grade of the parking area(s) to which such signs are accessory.
- (11) Patron advertising signs. Signs erected on the perimeter of an organization-sponsored youth athletic field for the sole purpose of sponsoring or contributing to the organized youth athletic sport. Signs erected for this purpose shall be one-sided with a maximum of 32 square feet of gross aggregate surface area. Sponsors advertising on score boards may not exceed 25% of the surface area of the score board.
- (12) Plaques. Plaques, nameplates or memorial signs, directly attached or affixed to the exterior walls of a building, not exceeding four square feet in aggregate gross surface area.
- (13) Public notices. Official notices posted by public officers or employees in the performance of the officer's or employee's duties.
- (14) Government signs. Signs required by governmental bodies or specifically authorized for a public purpose by any law, statute or ordinance. Such signs may be of any type, number, area, height, location or illumination as required by law, statute or ordinance.
- (15) Signs on vehicles. Signs placed on or affixed to vehicles and/or trailers where the sign is incidental to the primary use of the vehicle or trailer. However, this is not in any way intended to permit signs placed on or affixed to vehicles and/or trailers which are parked on a public right-of-way, public property or private

property so as to be visible from a public right-of-way where the apparent purpose is to advertise a product or direct people to a business or activity located on the same or other property.

- (16) Symbols or insignia. Religious symbols, commemorative plaques of recognized historical agencies, or identification emblems of religious orders or historical agencies not exceeding two square feet in gross surface area for each exposed face not exceeding four square feet in aggregate gross surface area.
 - (17) Vending machine signs. Permanent, nonflashing signs on vending machines, gasoline pumps, ice or milk containers, or other similar machines indicating only the contents of such devices, the pricing of the contents contained within, directional or instructional information as to use, and other similar information as to the use, and other similar information not exceeding four square feet in gross surface area for each exposed face, not exceeding an aggregate gross surface area of eight square feet on each machine.
 - (18) Warning signs. Signs warning the public of the existence of danger, but containing no advertising material, to be removed within three days upon the subsidence of danger. Such warning signs may be of any type, number, area, height, location or illumination as deemed necessary to warn the public of the existence of danger.
 - (19) Tourist signs. Tourist-orientation directional signs when erected in accord with a permit issued by PennDOT.
- C. Construction requirements. All signs permitted by this chapter shall be constructed in accord with the National Electrical Code and the Dalton Borough Building Code and the provisions of this § 400-69C.
- (1) Obstruction to exit. No sign shall be erected, constructed or maintained so as to obstruct any fire escape, required exit, window, door opening or wall opening intended as a means of ingress or egress.
 - (2) Obstruction to ventilation. No sign shall be erected, constructed, or maintained so as to interfere with any opening required for ventilation.
 - (3) Clearance from electrical power lines and communication lines. All signs shall be located in such a way that they maintain horizontal and vertical clearance of all electrical power lines and communication lines in accordance with the applicable provisions of the National Electrical Code. However, in no instance shall a sign be erected or constructed within eight feet of any electrical power line, conductor or service drop, or any communication line, conductor or service drop.
 - (4) Clearance from surface and underground facilities. All signs and supporting structures shall maintain clearance and noninterference with all surface and underground facilities and conduits for water, sewage, gas, electricity or communications equipment or lines. In addition, the placement of all signs and their supporting structures shall not interfere with natural or artificial drainage or surface or underground water.

- (5) No obstruction to any existing warning or instructional sign. No sign shall be erected, constructed or maintained so as to interfere with any existing warning or instructional sign.
 - (6) Traffic hazards. No sign shall be erected in such a way as to interfere with or to confuse traffic, to present any traffic hazard, or to obstruct the vision of motorists, and all signs shall comply with the clear sight triangle requirements of this chapter.
 - (7) Public right-of-way. No sign may be erected or maintained in the public right-of-way unless an encroachment permit has first been obtained for the sign.
- D. Maintenance. Signs shall be constructed of durable materials, maintained in good condition and not allowed to become dilapidated. If the Zoning Officer has determined that a sign is not secure, safe, in good state of repair, or otherwise not in compliance with this Article XI, the Zoning Officer shall give written notice of this fact to the owner or other person responsible for the maintenance of the sign, requiring the sign to be corrected or repaired within a specific period of time, which period shall be determined by the Zoning Officer in each case based upon the particular circumstances and whether it imposes a hazard to public safety or health or otherwise causes or creates a dangerous or hazardous condition or situation. If the defect in or condition of the sign is not corrected or repaired within the time period allowed by the Zoning Officer, the Zoning Officer shall revoke the permit to maintain the sign and, if it is not then immediately removed, to remove the sign at the expense of the owner and keep possession of it until the owner pays the cost of removal.
- E. Illumination. All signs permitted by this chapter may be illuminated in accord with the provisions of this § 400-69E.
- (1) Type of illumination. Illumination may be by internal, internal indirect or by indirect means.
 - (2) Flashing. Flashing signs are prohibited in accord with § 400-69A.
 - (3) Glare. All signs shall be so designed, located, shielded and directed so as to prevent the casting of glare or direct light from artificial illumination upon adjacent publicly dedicated roadways and surrounding property.
 - (4) Illumination of buildings, structures and areas.
 - (a) The use of unshielded lighting, including incandescent light bulbs hung or strung on poles, wires or any other type of support to illuminate buildings, structures, outdoor sales areas, or outdoor storage area is prohibited except during the month of December for areas in which Christmas trees are offered for sale and on a temporary basis for areas in which carnivals, fairs or other similar activities are held;
 - (b) A building or other structure may be illuminated, but all lighting used for this purpose must be designated, located, shielded and directed in such a manner that the light source is fixed and not directly visible from any adjacent publicly dedicated roadway and surrounding property.

- F. Signs on roof. No sign attached to a building shall be placed on nor shall extend above any part of the building roof except in C-2 and M-1 Districts, where signs on roofs shall be permitted, provided the sign does not extend above the highest point of the roof on which it is placed.
- G. Awning, canopy and marquee signs. Awning, canopy and marquee signs shall be permitted for any permitted nonresidential use in accord with the following:
- (1) Area. The gross surface area of an awning, canopy or marquee sign shall not exceed 16 square feet, but shall be limited to not more than 50% of the gross surface area of the face of the awning, canopy or marquee to which such sign is affixed.
 - (2) Letters' attachment. Letters shall not exceed 10 inches in height. Any awning, canopy or marquee sign must be painted on or attached flat against the surface and shall not project higher than the top of the awning, canopy or marquee to which such sign is to be affixed.
 - (3) Clearance. There shall be a minimum clearance of seven feet from the sidewalk to the lowest part of the framework or fixed portion of the awning, except that the bottom of the valance of the awning's canvas or other covering shall have a minimum clearance of six feet nine inches above the sidewalk.
 - (4) Illumination. Only the face area of the letters or logos may be illuminated, and all illumination must be internal behind the surface of the awning, canopy or marquee.
 - (5) Awning valance. If sign letters or logos are placed on the awning valance, no letters or logos may be placed elsewhere on the awning.
- H. Changeable panel signs. One changeable panel sign board may be erected on a lot containing one or more commercial, manufacturing, industrial, public or semipublic use, referred to as "business" in this section, subject to the following:
- (1) Type. The changeable panel sign shall be a ground sign or may be attached to the same support of the permitted business identification ground sign.
 - (2) Number. One changeable panel sign may be erected on the business parcel, identifying special, unique, limited activities, services, products or sale of limited duration occurring on the premises on which the changeable panel sign is located.
 - (3) Area. The gross surface area of a changeable panel sign shall not exceed 10 square feet for each exposed face.
 - (4) Location. A changeable panel sign shall maintain side and rear yard setbacks and shall not extend within 15 feet of any point of vehicular access to a public roadway.
 - (5) Height. If the changeable panel sign is separate from the main freestanding sign, the changeable panel sign may not project higher than 10 feet, as measured from the base of the sign or grade of the nearest adjacent roadway, whichever is higher. The changeable panel sign shall be separated by a

minimum of 12 inches from the main ground pole sign.

- (6) Fuel prices. Establishments engaged in the retail sale of fuel may also erect one additional changeable panel sign on the same frame as the main business identification sign to list fuel prices, and said sign shall not exceed six square feet for each exposed face.
- I. Sign faces. All signs may be multifaced.
 - J. Window signs. Window signs for commercial, manufacturing, industrial, public and semipublic uses, referred to as "business" in this section, shall be permitted, subject to the following:
 - (1) Location. Signs on or inside the windows of a business are permitted, but no signs are permitted in unglazed openings, and any interior sign placed within three feet of the window pane shall be considered a window sign.
 - (2) Area. No more than 25% of any window pane that is more than three feet in any dimension may be used for such signs. The area of any business identification sign shall be deducted from the total sign area allowed for the use on the property, and the total of all window signs shall not exceed 50% of the total sign area allowed for the entire business use.
 - (3) Sign copy. Sign copy shall be limited to business identification and a graphic symbol, or any combination thereof, or signs advertising products or services available on the premises.
 - (4) Illumination. Window signs may be internally illuminated.
 - K. Freestanding sign landscaping. All freestanding business and residential identification signs shall be placed in a landscaped area of not less than four square feet of landscaping for one square foot of sign area, but in no case less than 120 square feet.
 - L. Sign design. Signs shall be architecturally integrated with the design of the building and landscaping for the property and other signs on the property.
 - M. Flags. Flags shall be permitted for commercial, manufacturing, industrial, public and semipublic uses, referred to as "business" in this section, subject to the following:
 - (1) Business identification. The flag shall identify the business.
 - (2) Flag pole. The flag shall be suspended from a pole and the maximum height shall be 36 feet. The flag pole shall be placed within a landscaped setting of not less than one square foot for every one foot of each flag pole.
 - (3) Area. The maximum area of the flag shall be 24 feet; however, this shall not apply to the United States flag or the Commonwealth of Pennsylvania flag.
 - (4) Government flags. Governmental flags provided for elsewhere in the chapter are not restricted by the provisions of this section.
 - N. Wall signs. Wall signs as permitted by this chapter shall be securely attached to the

wall, and each sign shall be parallel to and in the same plane as the wall to which the sign is attached and shall not extend more than six inches from the wall, nor above or beyond the top and ends of the wall.

§ 400-70. Temporary signs.

Temporary signs may be erected and maintained in accordance with the provisions contained in this § 400-70.

A. General conditions.

- (1) Permit required. No person shall erect, construct, repair, alter or relocate within the Borough any temporary sign, except real estate and temporary construction signs, without first obtaining a permit from the Zoning Officer.
- (2) Materials and methods. The Zoning Officer shall impose, as a condition of the issuance of a permit for temporary signs, such requirements as to the material, manner of construction, and method of erection of a sign as are reasonably necessary to assure the health, safety, welfare and convenience of the public.
- (3) Illumination. Temporary signs may be illuminated in accord with this chapter.
- (4) Sign types. Temporary signs shall be limited to nonprojecting wall signs, attached ground signs, or portable and wheeled signs.

B. Temporary business signs. Temporary business signs in association with an approved use, identifying a special, unique or limited activity, service, product or sale of limited duration, shall be subject to the following:

- (1) Number. There shall not be more than two permits for temporary business signs issued for the same premises within one calendar year. Each temporary business sign permit may be erected and maintained for a period not to exceed 30 days and shall be removed within three days of the termination of the activity, service, project or sale. Or, alternatively, a temporary business sign permit may be applied for a maximum of five times during one calendar year for the same premises; each permit shall be issued for a maximum of seven days. It is expressly stated that temporary business sign permits shall be issued under one method or the alternative and that the methods may not be used jointly or in combination during any one calendar year.
- (2) Area. Temporary business signs shall not exceed 16 square feet in gross surface area for each exposed face.
- (3) Location. Temporary business signs shall be located only upon the premises upon which the special, unique or limited activity, service product or sale is to occur. Such signs may be located in any required yard setback but shall not extend over any lot line or within 15 feet of any point of vehicular access to a public roadway.
- (4) Height. Temporary business signs shall not project higher than 15 feet, as measured from the average grade of the associated principal use or structure.

C. Temporary development signs. Temporary development signs in association with

an approved use, identifying the parties involved in the development to occur or occurring on the premises on which the sign is placed, shall be subject to the following:

- (1) Number. There shall not be more than one temporary construction sign for each project or development, except that, where a project or development abuts two or more streets, additional such signs, one oriented to each abutting street, shall be permitted.
 - (2) Area.
 - (a) Residential districts. In residential districts, temporary construction signs shall not exceed eight square feet in gross surface area for each exposed face.
 - (b) Nonresidential districts. In nonresidential districts, temporary construction signs shall not exceed 16 square feet in gross surface area for each exposed face.
 - (3) Location. Temporary construction signs shall be located only upon the premises upon which construction either is about to occur or is occurring. Such signs may be located in any required yard setback but shall not extend over any lot line or within 15 feet of any point of vehicular access from a public roadway.
 - (4) Height. Temporary construction signs shall not project higher than 15 feet, as measured from the base of the sign or grade of the nearest adjacent roadway, whichever is higher.
 - (5) Special conditions. Temporary construction signs shall be permitted only as accessory to an approved building permit for a project or development. Temporary construction signs may be erected and maintained for a period not earlier than 60 days prior to the commencement of construction of the project or development and must be removed prior to an occupancy permit being issued or, if no occupancy permit is required, the sign shall be removed upon project completion.
- D. Temporary event signs (including banners). Temporary event signs announcing a campaign, drive, activity or event of a civic, philanthropic, educational or religious organization for noncommercial purposes shall be subject to the following:
- (1) Number, area, height and location. The permitted number, area, height, location and construction of temporary event signs shall be determined by the Zoning Officer with consideration given to the public intended purpose. In any event, no sign shall exceed 16 square feet for each exposed face.
 - (2) Timing. Temporary event signs may be erected and maintained for a period not to exceed 30 days prior to the date of which the campaign, drive, activity or event advertised is scheduled to occur and shall be removed within three days of the termination of such campaign, drive, activity or event.
 - (3) Limit on number of permits. No more than two permits for temporary event signs shall be issued for the same premises within one calendar year.

- E. Temporary political signs. Temporary political signs announcing political candidates seeking office, political parties, and/or political and public issues contained on a ballot shall be subject to the following:
- (1) Location. On private property, temporary political signs may be located in any required yard but shall not be affixed to a utility pole or structure or to a fence, tree, shrub, rock or other natural objects, other than on an owner's individual property. Failure to remove any such prohibited sign shall empower the Zoning Officer to remove it at the expense of the owner.
 - (2) Area. Temporary political signs shall exceed 12 square feet for each exposed face.
 - (3) Timing. Temporary political signs may be erected or maintained for a period not to exceed 30 days prior to the date of the election to which such signs are applicable and shall be removed within seven days following such election. The candidate is responsible for all political signs of candidates of the party if they are located in the public right-of-way.
- F. Temporary real estate signs. Temporary real estate signs advertising the sale, lease or rent of the premises upon which such sign is located shall be subject to the following:
- (1) Number. There shall be not more than one temporary real estate sign for each lot, except that, where a lot abuts two or more streets, one additional sign, oriented to each abutting street, shall be permitted.
 - (2) Area. In R-1, R-2, R-R and C-1 Districts, temporary real estate signs shall not exceed six square feet for each exposed face. In C-2 and M-1 Districts, temporary real estate signs shall not exceed 32 square feet for each exposed face.
 - (3) Location. Temporary real estate signs shall be located only upon the premises for sale, lease or rent. Such signs may be located in any required yard but shall not extend over any lot line or within 15 feet of any point of vehicular access to a public roadway.
 - (4) Height. Temporary real estate signs shall not project higher than 15 feet, as measured from the base of the sign or grade of the nearest adjacent roadway, whichever is higher.
 - (5) Special conditions. Temporary real estate signs shall be removed within seven days of the sale or lease of the premises upon which the sign is located.
- G. Temporary contractor or subcontractor signs. Temporary contractor or subcontractor signs for the sole purpose of designating the contractor(s) and subcontractor(s) engaged in the development of a property shall be subject to the following:
- (1) Number. There shall be not more than one temporary contractor or subcontractor sign for each contractor or subcontractor working on the premises.

- (2) Area. Such sign shall not exceed six square feet for each exposed face in R-1, R-2, R-R and C-1 Districts or 12 square feet for each exposed face in C-2 and M-1 Zoning Districts; or one sign that includes all of the participating parties shall not exceed 24 square feet for each exposed face in R-1, R-2, R-R and C-1 Districts and 48 square feet for each exposed face in C-2 and M-1 Districts.
 - (3) Location. Temporary contractor or subcontractor signs shall be located only upon the premises where the contractor or subcontractor is working. Such signs may be located in any required yard but shall not extend over any lot line or within 15 feet of any point of vehicular access to a public roadway.
 - (4) Height. Temporary contractor or subcontractor signs shall not project higher than 10 feet, as measured from the base of the sign or grade of the nearest adjacent roadway, whichever is higher.
 - (5) Special conditions. Temporary contractor or subcontractor signs shall be removed immediately upon completion of the contractor's or subcontractor's work.
- H. Temporary yard or garage sale, open house, or auction signs. Temporary yard sale or garage sale, open house, or auction signs advertising the sale of items and the sales location shall be subject to the following:
- (1) Number. For each sale, there shall not be more than two such temporary signs at each street intersection.
 - (2) Area. Such signs shall not exceed four square feet for each exposed face.
 - (3) Location. Such signs may be located within the street or road right-of-way but not beyond the edge of the street shoulder or curb. Any such temporary signs shall be self-supported and shall not create a public hazard. No such sign shall be placed in any Borough park.
 - (4) Height. Such temporary signs shall not exceed four feet in height.
 - (5) Timing. Such temporary signs may be erected no sooner than two days before the event and must be removed immediately after the event.

§ 400-71. Residential uses.

For all residential uses, only the following signs are permitted and then only if accessory and incidental to a permitted residential use.

- A. Building name and address signs. Building name and address signs shall comply with Borough Ordinance No. 8-1990.
- B. Residential development road entrance signs. Residential development road entrance signs for developments with two or more buildings with a total of 20 or more dwelling units, indicating only the name of the development, including single-family, two-family and multifamily developments and mobile home parks, the management or developer thereof, and/or the address or location of the development, shall be subject to the following:

- (1) Type. The residential development road entrance signs shall be ground signs.
- (2) Number. There shall not be more than two residential development road entrance signs for each point of vehicular access to a development.
- (3) Area. Residential development road entrance signs shall not exceed 24 square feet in gross surface area.
- (4) Location. Residential development road entrance signs may be located in any required yard but shall not extend over any lot line or within 15 feet of any point of vehicular access from a public roadway. The location and arrangement of all residential development signs shall be subject to the review and approval of the Zoning Officer.
- (5) Height. Residential development road entrance signs shall not project higher than five feet, as measured from base of sign or grade of the nearest adjacent roadway, whichever is higher.
- (6) Sign faces. Residential development road entrance signs may be double-faced only when one such sign is used at a road entrance.

C. Exempt signs. Exempt signs as specified in § 400-69B of this chapter.

D. Temporary signs. Temporary signs as specified in § 400-70 of this chapter.

§ 400-72. Commercial, manufacturing, public use and semipublic use signs.

For all commercial, manufacturing, industrial, public and semipublic uses, referred to as "business" in this section, only the following signs are permitted and then only if accessory and incidental to a permitted use, and such signs shall be subject to the requirements of this § 400-72 and any other special provisions contained in this chapter:

A. Individual business identification signs. The provisions of this § 400-72A shall apply to parcels upon which an individual business is located.

- (1) Building wall signs (See definition of "wall sign.")
 - (a) Area. The aggregate surface area of wall signs shall not exceed 20% of the area of the building wall, including doors and windows, to which the sign is to be affixed but not to exceed 200 square feet in C-2 and M-1 Districts and 64 square feet in all other districts. The surface area of a wall sign may be increased by 10% if such wall sign consists only of individual, outlined alphabetic, numeric and/or symbolic characters without background, except that provided by the building surface to which the sign is to be affixed, and, if illuminated, such illumination is achieved through shielded spot lighting but not any lighting where the light source is visible or exposed on the face or sides of the characters.
 - (b) Location. A wall sign may be located on the outermost wall of any principal building. The location and arrangement of all wall signs shall be subject to the review and approval of the Zoning Officer.
 - (c) Height. A wall sign shall not project higher than the parapet line of the

wall to which the sign is to be affixed or 15 feet, as measured from the base of the building wall to which the sign is to be affixed, whichever is lower.

- (2) Freestanding or projecting business identification signs. Freestanding business identifications signs shall be subject to the following:
 - (a) Number. There shall not be more than one freestanding or projecting business identification sign for each lot.
 - (b) Area. The surface area of each face of the business identification sign shall not exceed 50 square feet in C-2 or M-1 Districts. In all other districts, the surface area of each face of a freestanding business identification sign shall not exceed 20 square feet and nine square feet for projecting signs.
 - (c) Location. A freestanding business identification sign shall maintain side and rear yard setbacks and shall not extend within 15 feet of any point of vehicular access to a public roadway.
 - (d) Height. A freestanding business identification sign shall not project higher than 15 feet. The bottom of a projecting sign shall have a minimum clearance of nine feet above the sidewalk.
- B. Shopping center and multiple-occupant business identification signs. The provisions of this § 400-72B shall apply to developments in which two or more businesses are housed in one or more principal structures.
 - (1) Building wall signs.
 - (a) Number. There shall be not more than one wall sign for each principal business occupant, except that, where a principal occupant abuts two or more streets, one additional such sign oriented to each abutting street shall be permitted.
 - (b) Area. The surface area of a wall sign shall not exceed 10% of the occupant's proportionate share of the area of the building wall, including doors and windows, to which the sign is to be affixed or 64 square feet, whichever is smaller. The surface area of a wall sign may be increased by 10% if such wall sign consists only of individual, outlined alphabetic, numeric and/or symbolic characters without background, except that provided by the building surface to which the sign is to be affixed, and, if illuminated, such illumination is achieved through shielded spot lighting, but not any lighting where the light source is visible or exposed on the face or sides of the characters.
 - (c) Location. A wall sign may be located on the outermost wall of any principal building. The location and arrangement of all wall signs shall be subject to the review and approval of the Zoning Officer.
 - (d) Height. A wall sign shall not project higher than the parapet line of the wall to which the sign is to be affixed or 15 feet, as measured from the base of the building wall to which the sign is to be affixed, whichever is

lower.

- (2) Freestanding business identification signs. Freestanding business identification signs may be ground signs or monument signs used solely for the identification of the development and shall be subject to the following:
 - (a) Number. There shall not be more than one freestanding business identification sign for each development.
 - (b) Area. The surface area of a freestanding business identification sign shall not exceed a maximum of 50 square feet.
 - (c) Location. A freestanding business identification sign shall maintain side and rear yard setbacks and shall not extend within 15 feet of any point of vehicular access to a public roadway.
 - (d) Height. A freestanding business identification sign shall not project higher than 15 feet, as measured from the average grade at the base of the sign or the grade of the nearest adjacent roadway, whichever is lower.
 - (e) Individual occupant identification. The freestanding business identification sign shall not contain the name of any individual business occupant of the premises unless such tenant or occupant occupies 30% or more of the total development. Each freestanding business identification sign may include, affixed directly to it, a directory indicating only the names of the business occupants of the development in which the sign is to be located. The directory shall include the names of all business tenants/occupants on one sign and shall not be comprised of individual signs. The gross surface area of a directory sign shall not exceed 10 square feet for each exposed face for each occupant in the development.
- C. Business subdivision road entrance signs. Business subdivision road entrance signs for developments with two or more commercial, manufacturing, industrial, public and semipublic buildings, referred to as "business" in this section, indicating only the name of the development, shall be subject to the following:
 - (1) Type. The business subdivision road entrance signs shall be ground signs.
 - (2) Number. There shall not be more than two business subdivision road entrance signs for each point of vehicular access to a development.
 - (3) Area. Business subdivision road entrance signs shall not exceed 24 square feet in gross surface area.
 - (4) Location. Business subdivision road entrance signs may be located in any required yard but shall not extend over any lot line or within 15 feet of any point of vehicular access from a public roadway. The location and arrangement of all residential development signs shall be subject to the review and approval of the Zoning Officer.
 - (5) Height. Business subdivision road entrance signs shall not project higher than five feet, as measured from base of sign or grade of the nearest adjacent roadway, whichever is higher.

- (6) Sign faces. Business subdivision road entrance signs may be double-faced only when one such sign is used at a road entrance.
- D. Automatic teller machine (ATM) signs. ATM signs shall be permitted in association with an approved commercial use, subject to the following:
- (1) Location. Such sign shall be located on the face of the machine and may only identify the individual business name, logo, time and principal services offered at the ATM.
 - (2) Area. The area of any such sign shall not exceed 10 feet. The bezel and architectural border of an ATM sign shall not be included in the sign area unless they contain sign characters, logos or other sign graphics. The area of any ATM signage not visible beyond the boundaries of the property shall not be deducted from the sum total area permitted for the use. Wording, symbols and graphics which instruct persons on the use of the ATM shall not be considered part of the sign area unless they are visible beyond the boundaries of the property and attract the attention of the public.
 - (3) Permit. No sign permit shall be required for such sign.
- E. Business directional signs. The intent of this section is to allow commercial, manufacturing, industrial and institutional uses, referred to as "business" in this section, located in Dalton Borough and which do not front on State Route 6/11, to erect temporary signs directing the public to the business.
- (1) Number. There shall not be more than two directional signs (and only one sign at each location where erected) for each parcel of land eligible for such signs. In the case of multiple businesses on the same parcel, each business shall not be eligible for signs; instead, the directional signs shall refer to the parcel as a whole.
 - (2) Area. The surface area of each sign shall not exceed six square feet for each exposed face.
 - (3) Height. A directional sign shall not project higher than 10 feet, as measured from the average grade at the base of the sign or the grade of the nearest adjacent roadway, whichever is lower.
 - (4) Sign information. The information on the sign shall be limited to the business name, logo, telephone number and directional information.
 - (5) Property owner permission. The person making application for the erection of a business directional sign shall provide a written statement of permission signed by the owner of the property upon which the sign is proposed.
 - (6) Temporary nature of signs. All business directional signs shall be considered temporary signs in terms of nonconformity status should the number of signs erected in the Borough dictate the imposition of limitations on such numbers to protect the public health, safety and welfare. Any such signs which do not comply with any subsequent amendment of this chapter shall be brought into compliance, including removal of the sign if required by any new or amended regulations adopted by the Borough.

§ 400-73. Off-premises advertising signs and billboards.

The intent of this § 400-73 is to limit the number, size and location of off-premises advertising signs and billboards to reduce visual clutter in the Borough, prevent the distraction of drivers, and maintain the character of the community. Off-premises advertising signs and billboards may be erected and maintained only on parcels in the C-2 District fronting on State Route 6/11 in accord with the requirements of this § 400-73 and all other applicable requirements of this chapter, and applications for such signs shall be considered conditional uses.

- A. Principal use. Off-premises advertising signs and billboards shall be considered principal uses and shall not be permitted on a lot with any other principal use.
- B. Illumination; movement. Off-premises advertising sign or billboard may be illuminated, but flashing lights or devices, moving parts, changing text and animation, shall be prohibited.
- C. Setbacks. Off-premises advertising signs and billboards shall not be less than 10 feet from the public right-of-way and not less than 25 feet from any side or rear lot line.
- D. Height of signs. No off-premises advertising sign or billboard shall project more than 25 feet above the grade of the closest point of the road surface of Route 6/11.
- E. Maximum area of off-premises advertising signs and billboards.
 - (1) The total surface area of each face of any such sign, exclusive of structural supports and trim, shall not exceed in square feet four times the frontage of the lot or tract on which it stands, but in no case more than 300 square feet.
 - (2) A sign structure may be double-sided but shall contain only one sign per facing.
- F. Spacing of off-premises advertising signs and billboards:
 - (1) No off-premises advertising sign or billboard shall be permitted within 500 feet of another off-premises advertising sign or billboard, measured in all directions: The separation distance shall be measured between the closest points of the two signs in question.
 - (2) No off-premises advertising sign or billboard shall be permitted within 200 of any dwelling or residential district in the Borough or any adjoining municipality. The separation distance shall be measured between the closest points of the proposed sign and the residential lot or residential district in question.
 - (3) No off-premises advertising sign or billboard shall be permitted within 200 feet of any park, recreational area, trail system, public or parochial school, municipal building, library, church, hospital or similar institutional use. The separation distance shall be measured between the closest points of the proposed sign and the parcel of land on which the building or use in question is located.

- (4) No off-premises advertising sign or billboard shall be constructed at an angle of less than 45° to the right-of-way upon which it fronts.
- G. Engineering certification. Any applications for an off-premises advertising sign or billboard shall be accompanied by certification under seal by a professional engineer registered in the Commonwealth of Pennsylvania that the sign as proposed will not present a structural safety hazard.

§ 400-74. Nonconforming signs.

- A. Legal nonconforming signs. Any sign lawfully existing or under construction on the effective date of this chapter, which does not conform to one or more of the provisions of this chapter, may be continued in operation and maintained as a legal nonconforming sign.
- B. Maintenance and repair of legal nonconforming signs. Normal maintenance of legal nonconforming signs, including changing of copy, necessary repairs, and incidental alterations which do not extend or intensify the nonconforming features of the sign, shall be permitted. However, no alteration, enlargement or extension shall be made to a legal nonconforming sign unless the alteration, enlargement or extension will result in the elimination of the nonconforming features of the sign. If a legal nonconforming sign is damaged or destroyed by any means to the extent of 50% or more of its replacement value at the time, the sign may not be rebuilt to its original condition and may not continue to be displayed.
- C. Abandonment. See § 400-55.

§ 400-75. Removal of certain signs.

- A. Obsolete signs. Any sign, whether existing on or erected after the effective date of this chapter, which advertises a business no longer being conducted or a product no longer being offered for sale in or from the premises on which the sign is located, shall be removed within 90 days upon the cessation of such business or sale of such product by the owner, agent or person having the beneficial interest in the building or premises on which such sign is located. If the Zoning Officer shall find that any such sign advertising a business no longer being conducted or a product no longer being offered for sale in or from the premises on which the sign is located has not been removed within 90 days upon the cessation of such business or sale of such product, he shall give written notices to the owner, agent or person having the beneficial interest in the building or the premises on which such sign is located. Removal of the sign shall be effected within 10 days after receipt of the notice from the Zoning Officer. If such sign is not removed after the conclusion of such ten-day period, the Zoning Officer is hereby authorized to cause the sign to be removed forthwith at the expense of the owner, agent or person having the beneficial interest in the building or premises on which such sign is located.
- B. Unsafe signs. If the Zoning Officer shall find that any sign is unsafe or insecure, or is a menace to the public, he shall give written notice to the owner, agent or person having the beneficial interest in the building or the premises on which such sign is located. Correction to the condition which caused the Zoning Officer to give such notice shall be effected within 10 days after receipt of the notice. If such condition

is not corrected after the conclusion of such ten-day period, the Zoning Officer is hereby authorized to cause the sign to be removed forthwith at the expense of the owner, agent or person having the beneficial interest in the building or premises on which such sign is located. Notwithstanding the foregoing provisions, the Zoning Officer is authorized to cause any sign to be removed summarily and without notice, at the expense of the owner, agent or person having the beneficial interest in the building or premises on which such sign is located, whenever the Zoning Officer determines that such sign is an immediate peril to persons or property.

ARTICLE XII
Administration

§ 400-76. Applicability.

- A. Conformance. Any activity regulated by this chapter shall only occur or be undertaken and be continued in conformance with the requirements of this chapter.
- B. Authorization. This chapter regulates all matters and activities authorized by Article VI of the Pennsylvania Municipalities Planning code, as amended.¹³⁰
- C. Regulated activities. Any of the following activities or any other activity or matter regulated by this chapter shall only be undertaken after the required permit or approval has been obtained in full compliance with this chapter:
 - (1) Erection, construction, movement, placement or extension of a structure, building or regulated sign;
 - (2) Change in the type of use or expansion of the use of a structure or area of land; and/or
 - (3) Creation of a lot or alteration of lot lines.
- D. Repairs and maintenance. Ordinary repairs, structural strengthening, facade improvements and maintenance to existing structures that do not infringe upon a required setback may be made without a zoning permit, provided such activity does not involve: 1) a change in use; 2) an expansion, construction or placement of a structure; 3) an increase in the number of dwelling units or boardinghouse units; and/or 4) any other activity regulated by this chapter.

§ 400-77. General procedure for permits.

- A. Principal permitted use. Within 90 days of receiving a proper and complete application for a principal permitted use (permitted by right), the Zoning Officer shall either:
 - (1) Issue the permit under this chapter; or
 - (2) Refuse the permit, indicating at least one applicable reason in writing to the applicant or his/her representative.
- B. Reviews. Certain activities require review and/or approval of the Zoning Hearing Board and/or of the Borough Council and/or the recommendation of the Planning Commission. In such case, the Zoning Officer shall not issue a zoning permit until such required review or approval occurs.
- C. Appeal. See § 400-81B, which describes processes to appeal actions of the Zoning Officer to the Zoning Hearing Board.
- D. Timing. After a zoning permit has been received by the applicant, the applicant may undertake the action permitted by the permit under this chapter, provided the work

130. Editor's Note: See 53 P.S. § 10601 et seq.

complies with other Borough ordinances. However, it is recommended that applicants wait 30 days to begin construction if there is a possibility of an appeal by another party to have the permit revoked. Any commencement of construction or a use within this thirty-day appeal period shall be at the risk of the applicant. (See use permit process in § 400-78G.)

§ 400-78. Permits and certificates.

A. Applicability. See § 400-76.

B. Types of uses.

- (1) Principal permitted uses and accessory uses (permitted by right). If a use is listed as a principal permitted or accessory use by this chapter and meets the requirements of this chapter, the Zoning Officer shall issue or deny a permit in response to a complete application.
- (2) Special exception use or application requiring a variance. A permit under this chapter for a use requiring a special exception or variance shall be issued by the Zoning Officer only upon the written order of the Zoning Hearing Board after a hearing.
- (3) Conditional use. A permit under this chapter for a conditional use shall be issued by the Zoning Officer only upon the written order of the Borough Council, after the Planning Commission has been given an opportunity to review the application.

C. Applications.

- (1) Applications. Any request for a decision, interpretation or variance by the Zoning Hearing Board, application for a conditional use or for a permit under this chapter shall be made in writing on a form provided by the Borough and in accord with the procedures established by the Borough. Such completed application, with any required fees and with any required site plans or other required information, shall be submitted to the Borough employee responsible for processing such application. The applicant is responsible to ensure that a responsible Borough official notes the date of official receipt on the application.
- (2) Number of copies. Unless waived by the Zoning Officer, five copies of a site plan shall be submitted if an application requires action by the Zoning Hearing Board or Borough Council and two copies shall be submitted if action by the Zoning Hearing Board or Borough Council is not required.
- (3) Information required. Any application to the Zoning Officer, Zoning Hearing Board, Planning Commission or Borough Council shall include the following information.
 - (a) In the case of an application involving the construction of any new structure or any addition to an existing structure, all of the information required in this § 400-78C shall be provided by the applicant. However, the Zoning Officer, Planning Commission, Borough Council, or the

Zoning Hearing Board, as the case may be, may determine, as part of the review process, that certain information is not required for a particular application, and upon such determination, the specified information need not be provided by the applicant.

- (b) In the case of an application which does not involve the construction of any new structure or any addition to an existing structure, a narrative providing details of the project shall be provided as required by this section. However, a plot plan, as required by § 400-78C(3)(c)[6] which follows, shall not generally be required unless the Zoning Officer, Planning Commission, Borough Council or the Zoning Hearing Board, as the case may be, deems such plot plan necessary to evaluate and make a decision on the application. The Zoning Officer, Planning Commission, Borough Council or the Zoning Hearing Board, as the case may be, shall determine, as part of the review process, the type of information and level of detail of the plot plan if such plot plan is required.
- (c) In any case, the Zoning Officer, Planning Commission, Borough Council or the Zoning Hearing Board, as the case may be, may require any other additional information or any level of detail deemed necessary to determine compliance with this chapter or to identify any impacts of the proposed use.

[1] Names and address of the applicant or appellant and the name and address of the owner of the affected property.

[2] A description of the existing and proposed use(s) of the property, including numbers of dwelling units, minimum square feet of proposed dwelling units, and number of proposed business establishments, if any.

[3] A description of any proposed nonresidential operations and storage in sufficient detail to indicate potential nuisances and hazards regarding noise, large truck traffic, glare, odors, dust, fire or toxic or explosive hazards or other significant public health and safety hazards.

[4] If a principal nonresidential use is proposed within close proximity to dwellings, a description of hours of operation and proposed methods of storing garbage outdoors on site.

[5] A listing of any specific sections of this chapters being appealed, with the reasons for any appeal.

[6] A plot plan legible in every detail and drawn to scale, but not necessarily showing precise dimensions, and including the following information:

[a] Name of the development.

[b] Name and address of landowner and/or land developer (if corporation, give name of officers).

- [c] Location map.
 - [d] North arrow, true or magnetic.
 - [e] Graphic scale.
 - [f] Written scale.
 - [g] Date plot plan was completed.
 - [h] Names of adjacent property owners and Tax Map numbers, including those across adjacent roads.
 - [i] Proposed and existing street and lot layout, including street names and right-of-way widths.
 - [j] Existing and proposed man-made and/or natural features:
 - [i] Watercourses, lakes and wetlands (with names).
 - [ii] Rock outcrops, ledges and stone fields.
 - [iii] Buildings, structures, signs and setbacks required by the chapter.
 - [iv] Approximate location of tree masses.
 - [v] Utility lines, wells and sewage system(s).
 - [vi] Entrances, exits, access roads and parking areas, including the number of spaces.
 - [vii] Drainage and stormwater management facilities.
 - [viii] Plans for any required buffer plantings.
 - [ix] Any and all other significant features.
 - [7] Location of permanent and seasonal high-water table areas and one-hundred-year flood zones.
 - [8] Tract boundaries accurately labeled.
 - [9] The total acreage of the tract and extent of the areas of the site to be disturbed and percentage of lot coverage when the project is completed.
 - [10] Location and type of rights-of-way or other existing restrictive covenants which might affect the subdivision and/or development.
 - [11] A statement of the type of water supply and sewage disposal proposed.
 - [12] The present zoning district and major applicable lot requirements.
- (4) Other laws. The Zoning Officer may withhold issuance of a permit under this

chapter if there is clear knowledge by the Zoning Officer that such a use would violate another Borough, state or federal law or regulation.

- (5) Ownership. No person other than a landowner or his specifically authorized agent or a tenant or lessee with written permission of the landowner shall submit a zoning application. (See definition of "landowner" in Article III.)
- (6) Advisory reviews. The Zoning Officer may submit a copy of any plan and application to any appropriate agencies and/or individuals (such as the Planning Commission, the Lackawanna County Planning Commission, the County Conservation District or the Borough Engineer) for review and comment.
- (7) Subdivision approval. Applications for uses which also necessitate approvals under Chapter 300, Subdivision and Land Development, shall be processed in the manner provided for plat approval under that chapter. Such applications shall also contain all information or data normally required for a submission under the Subdivision and Land Development Ordinance. A zoning permit shall not be issued until the proposed use has been granted a preliminary approval under Chapter 300, Subdivision and Land Development. However, no building or property shall be occupied or used until final subdivision approval has been granted and a certificate of use has been properly issued pursuant to § 400-78G of this chapter.

D. Issuance of permit.

- (1) At least two copies of any permit required under this chapter shall be made.
- (2) One copy of any such permit shall be retained in Borough files, and one copy shall be retained by the applicant. A copy of any such permit shall be shown by the applicant to the Zoning Officer upon the Zoning Officer's request.
- (3) The Zoning Officer shall issue or deny a permit for a principal permitted use within a maximum of 90 days after a complete, duly filed application and fees are submitted.
- (4) No owner, contractor, worker or other person shall perform building or construction activity of any kind regulated by this chapter unless a valid zoning permit has been issued for such work, nor shall such persons conduct such work after notice that a zoning permit has been revoked.

E. Revocation of permits.

- (1) The Zoning Officer shall revoke a permit or approval issued under the provisions of this chapter in cases of:
 - (a) Any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based: (The Pennsylvania Criminal Code provides for penalties for providing false information to a municipal employee in the carrying out of his/her duties).
 - (b) Upon violation of any condition lawfully imposed upon a special exception, variance or conditional use.

- (c) Any work being accomplished or land or structures being used in such a way that does not comply with this chapter or an approved site plan or approved permit application.
- (d) For any other just cause set forth in this chapter.
- (2) If a zoning permit is revoked, the person holding the permit shall immediately surrender such permit and all copies to the Zoning Officer.

F. Changes to approved plans.

- (1) After the issuance of a permit and/or approval under this chapter by the Borough, such approved application shall not be changed without the written consent of the Borough, as stated in Subsection F(2) below.
- (2) Changes to an approval by the Zoning Hearing Board as a special exception use or by the Borough Council as a conditional use shall require reapproval of the changes by such bodies if the Zoning Officer determines that such changes affect matters that were within the scope of approval of such body. Such approval by the Hearing Board or the Borough Council is not required for clearly minor technical adjustments or matters that are solely corrections of information that do not affect any of the significant features of the site plan or the intensity of the use, as determined by the Zoning Officer.
- (3) A copy of such adjustment or correction shall be provided in writing to the Chairperson of the Planning Commission, the President of the Borough Council or the Chairperson of the Zoning Hearing Board, if the change concerns a plan approved by such bodies.

G. Certificate of use.

- (1) A certificate of use shall be required by the Borough upon a change of use or completion of work authorized by a permit or approval under this chapter. It shall be unlawful to use and/or occupy a structure, building and/or land or portions thereof until such certificate has been issued. A new certificate of use shall be required if a change in use of the property is proposed, and then such certificate shall be issued only after all required approvals are obtained.
- (2) An application for such certificate shall be made on an official Borough form. If such use is in conformance with Borough ordinances and approvals, such certificate should be issued in duplicate within 10 days of a properly submitted and duly filed application. A minimum of one copy shall be retained in Borough records.
- (3) The Zoning Officer shall inspect such structure or land related to an application for such certificate. If the Zoning Officer determines, to the best of his/her current knowledge, that such work conforms with this chapter and applicable Borough codes, approvals and permits, then the certificate of use shall be issued.
- (4) The applicant shall show a valid certificate of use to the Zoning Officer upon request.

§ 400-79. Fees.

- A. Application fees. As authorized by Sections 617.3(e) and 908(1.1) of the Pennsylvania Municipalities Planning Code,¹³¹ the Borough Council shall establish a uniform schedule of fees, charges and expenses, as well as a collection procedure, for zoning permits, conditional use permits, Zoning Hearing Board proceedings and other matters pertaining to this chapter. Permits, certificates, conditional use permits, special exception permits and variances shall be issued only after fees have been paid in full, and the Zoning Hearing Board shall take no action on appeals until all fees have been paid in full.¹³²
- B. Stenographer fees. The appearance fee for a stenographer shall be shared equally by the applicant and the Borough. The cost of the original transcript shall be paid by the Borough if the transcript is ordered by the Borough or shall be paid by the person appealing the decision of the Borough if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases, the party requesting the original transcript shall bear the cost thereof.

§ 400-80. Zoning Officer.

- A. Appointment. The Zoning Officer(s) shall be appointed by the Borough Council. The Zoning Officer(s) shall not hold any elective office within the Borough but may hold other appointed offices not in conflict with the state planning code.¹³³
- B. Duties and powers. The Zoning Officer shall:
- (1) Administer the Zoning Ordinance.
 - (2) Provide information to applicants regarding required procedures.
 - (3) Receive and examine all applications required under the terms of this chapter and issue or refuse permits within this chapter.
 - (4) Receive written complaints of violation of this chapter and issue a written notice of violation to any person violating any provision of this chapter.
 - (5) Keep records of applications, permits, certificates, written decisions and interpretations issued, of variances and special exception granted by the Zoning Hearing Board, of conditional uses approved by the Borough Council, of complaints received, of inspections made, of reports rendered, and of notices or orders issued.
 - (6) Make all required inspections and perform all other duties as called for in this chapter.
 - (7) Not have the power to permit any activity which does not conform to this chapter or all other ordinances of the Borough known to the Zoning Officer.

131.Editor's Note: See 53 P.S. §§ 10617.3(e) and 10908(1.1).

132.Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

133.Editor's Note: See 53 P.S. § 10101 et seq.

- C. Qualifications. Pursuant to Section 614 of the Pennsylvania Municipalities Planning Code,¹³⁴ the following minimum qualifications shall apply to any Zoning Officer(s) appointed to serve the Borough after the adoption of this chapter, unless such mandatory qualifications are waived by motion of the Borough Council:
- (1) The person shall demonstrate a working knowledge of zoning.
 - (2) The person shall have one of the following combinations of education and experience:
 - (a) High school diploma or equivalent and a minimum of four years' responsible experience in administering and enforcing municipal zoning and/or subdivision and land development ordinances; or
 - (b) A high school diploma or equivalent and two additional years of continuing education, such as an associate degree (such continuing education preferably should be in a field such as law enforcement, community planning and/or public administration) and a minimum of two years' responsible experience in administering and enforcing municipal zoning and/or subdivision and land development ordinances; or
 - (c) A college or university bachelor's degree in a field related to zoning (such as law enforcement, community planning and/or government administration) and a minimum of eight months' responsible experience in administering and enforcing municipal zoning and/or subdivision and land development ordinances.
 - (3) The person shall be familiar with constitutional issues concerning search and seizure and with the process of filing actions with the Magisterial District Judge.
 - (4) The person shall exhibit an ability to thoroughly evaluate site plans and building plans.
 - (5) The person shall demonstrate excellent oral and written communication skills.
 - (6) The person shall be familiar with the Pennsylvania Municipalities Planning Code.¹³⁵
- D. Other Borough officials. Police officers, firefighters, construction inspectors, other Borough staff and Borough officials and the general public may report possible zoning violations to the Zoning Officer for his/her determination.

§ 400-81. Zoning Hearing Board.

A. Appointment and qualifications.

- (1) Appointment. The Borough Council shall appoint a Zoning Hearing Board, which shall have the number of members and alternate members with such powers and authority, and which shall conduct all proceedings, as set forth in

134.Editor's Note: See 53 P.S. § 10614.

135.Editor's Note: See 53 P.S. § 10101 et seq.

Article IX of the Pennsylvania Municipalities Planning Code, as enacted or hereafter amended.¹³⁶

- (2) Recommended qualifications. Each Zoning Hearing Board member should:
 - (a) Demonstrate a working knowledge of zoning prior to appointment.
 - (b) Become familiar with the Pennsylvania Municipalities Planning Code.
 - (c) Attend at least one seminar and/or workshop pertaining to municipal planning and/or zoning within each calendar year.
 - (3) Vacancies. The Board shall promptly notify the Borough Council of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of a term.
 - (4) Removal of members. See Section 905 of the Pennsylvania Municipalities Planning Code.¹³⁷
 - (5) Organization.
 - (a) Officers. The Board shall elect officers from its own membership. Officers shall serve annual terms and may succeed themselves.
 - (b) Quorum. For the conduct of any hearing and taking of any action, a quorum shall be not less than a majority of all members of the Board, except that the Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Board, as provided by the Pennsylvania Municipalities Planning Code.¹³⁸ The quorum may be met by alternate members serving as permitted by the Pennsylvania Municipalities Planning Code.
 - (c) Rules. The Board may make, alter and rescind rules and forms for its procedures, consistent with all applicable Borough ordinances and state law.
- B. Jurisdiction. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:
- (1) Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to Section 609.1 (curative amendments) and Section 916.1(a)(2) (ordinance validity) of the Pennsylvania Municipalities Planning Code.¹³⁹
 - (2) Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption, which challenges shall be raised by an appeal taken within 30 days after the effective date of said

136.Editor's Note: See 53 P.S. § 10901 et seq.

137.Editor's Note: See 53 P.S. § 10905.

138.Editor's Note: See 53 P.S. § 10101 et seq.

139.Editor's Note: See 53 P.S. §§ 10609.1 and 10916.1(a)(2).

ordinance. Where the ordinance appealed from is the initial zoning ordinance of the municipality and a zoning hearing board has not been previously established, the appeal raising procedural questions shall be taken directly to court.

- (3) Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit or failure to act on the application therefor, the issuance of any cease and desist order, or the registration or refusal to register any nonconforming use, structure or lot.
- (4) Applications for variances from the terms of the Zoning Ordinance pursuant to Section 910.2 of the Pennsylvania Municipalities Planning Code.¹⁴⁰
- (5) Applications for special exceptions under the Zoning Ordinance pursuant to Section 912.1 of the Pennsylvania Municipalities Planning Code¹⁴¹ and the requirements of this chapter.
- (6) Appeals from the Zoning Officer's determination under Section 916.2 (preliminary opinion) of the Pennsylvania Municipalities Planning Code.¹⁴²
- (7) Appeals from the determination of the Zoning Officer or Municipal Engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and stormwater management, insofar as the same relate to development not involving subdivision and land development applications.
- (8) The Zoning Hearing Board shall not, under any circumstances, have the authority to order any specific change in or amendment to the Zoning Map or to allow any use of property substantially different from those permitted under the Schedule of Use Regulations for the particular district.

§ 400-82. Hearings and decisions of Zoning Hearing Board.

The Zoning Hearing Board shall conduct hearings and make decisions in accordance with Section 908 of the Pennsylvania Municipalities Planning Code, as amended,¹⁴³ and the provisions of this § 400-82. The hearings shall be conducted by the Board or the Board may appoint any member or an independent attorney as a hearing officer. The decision or, where no decision is called for, the findings shall be made by the Board; however, the appellant or the applicant, as the case may be, in addition to the Borough, may prior to the decision of the hearing waive decision or findings by the Board and accept the decision or findings of the hearing officer as final. (For the purposes of this section, "Board" shall mean the Board or the hearing officer, if a hearing officer is appointed.)

A. Notice of hearings. Notice of all hearings of the Board shall be given as follows:

- (1) Advertisement. Public notice shall be published, as defined by Section 107 of

¹⁴⁰.Editor's Note: See 53 P.S. § 10910.2.

¹⁴¹.Editor's Note: See 53 P.S. § 10912.1.

¹⁴².Editor's Note: See 53 P.S. § 10916.2.

¹⁴³.Editor's Note: See 53 P.S. § 10908.

the Pennsylvania Municipalities Planning Code.¹⁴⁴ The notice shall state the time and place of the hearing and the particular nature and property address of the matter to be considered.

- (2) Posting. Notice of such hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing. Such notice shall state the time and place of the hearing and a general description of the request.
 - (3) Persons given notices. All notice under this subsection should be intended to be received or posted at least five days prior to the hearing date.
 - (a) Written notice shall be mailed or personally delivered to the applicant or his/her representative listed on an official application form.
 - (b) Notice may be delivered or mailed to the Chairperson of the Planning Commission or Borough Secretary and the last known address of owners of record of property abutting or directly across the street from the boundaries of the subject property. The applicant shall provide the Borough with a list of such property-owners. Failure of the Borough to notify all such persons shall not invalidate any action by the Board.
 - (c) Also, such notice shall be mailed or delivered to the address of any other person or group (including civic or community organizations) who has made a written timely request (including an address) for such notice.
 - (4) Adjacent municipalities. In any matter which relates to a lot which lies within 250 feet of the boundary of another municipality, and where the Zoning Officer determines the proposed activity may have significant impact on that municipality, the Borough staff may transmit to the offices of the adjacent municipality a copy of the official notice of the public hearing on such matter prior to the hearing date. Representatives of such adjacent municipality shall have the right to appear and be heard at the public hearing. Failure of the Borough to notify such municipality shall not invalidate any action by the Board.
 - (5) Fees. The Borough Council may, by resolution, establish a reasonable fee schedule, based on cost, to be paid by: a) the applicant for any notice required by this chapter; and b) those persons requesting any notice not required by the chapter.
- B. Parties in hearings. The Zoning Hearing Board shall have the authority, if it chooses to exercise it, to determine who has standing on each case before the Board.
- (1) The parties to a hearing shall be the Borough Council, the Planning Commission, any person affected by the application who has made timely appearance of record before the Board, representatives of any legitimate civic or community organization, and any other person permitted to appear before the Board.
 - (2) The Board shall have power to require that all persons who wish to be

144. Editor's Note: See 53 P.S. § 10107.

considered parties enter appearances in writing on forms provided by the Board for that purpose.

- (3) The Board shall determine that a person or business does not have standing if the Board finds that such person or business is apparently motivated primarily by an attempt to inhibit competition in an area of business and that such person or business would not otherwise be threatened with substantive harm from the application.
- C. Oaths and subpoenas. The Chairperson of the Board or hearing officer shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents reasonably needed by and requested by the parties.
 - D. Representation by counsel. The parties shall have the right to be represented by legal counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on relevant issues.
 - E. Evidence and record. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded. The Board or the hearing officer, as applicable, shall keep a record of the proceedings as required by state law.
 - F. Communications outside of hearings.
 - (1) The Board shall not meet with, visit the site with or directly communicate specifically on the matter with the applicant or any officially protesting party or their representatives in connection with any issue involved, except if opportunity is provided for the applicant and any officially protesting party to participate.
 - (2) The Board shall not take notice of any communications, reports, staff memoranda, or other materials directly affecting a proposed application unless the parties are afforded an opportunity to examine and contest the material so noticed or unless such materials are already a matter of public record. This restriction shall not apply to advice from the Board's solicitor.
 - G. Advisory review. The Zoning Hearing Board may request that the Planning Commission, County Conservation District or Borough Engineer provide an advisory review on any matter before the Board.
 - H. Hearings and decision. The Zoning Hearing Board shall conduct hearings and make decisions in accord with Section 908 of the Pennsylvania Municipalities Planning Code, as amended.¹⁴⁵
 - I. Solicitor conflict.
 - (1) The Zoning Hearing Board solicitor shall not represent private clients in cases before the Zoning Hearing Board.
 - (2) If a conflict of interest exists for the Zoning Hearing Board solicitor on a

145. Editor's Note: See 53 P.S. § 10908.

particular application, the Zoning Hearing Board solicitor shall notify the Chairperson of the Board at least seven days before the scheduled hearing date.

- (3) The Borough Council may appoint an alternate solicitor to the Zoning Hearing Board to serve as needed for a specific application or for a term of office.

§ 400-83. Variances.

The Board shall hear requests for variances filed with the Board in writing by any landowner (or any tenant with the permission of such landowner).

- A. Standards. The Board may grant a variance only within the limitations of the Municipalities Planning Code.¹⁴⁶ The applicant shall have the burden of proof to show compliance with such standards. As of 1993, the Municipalities Planning Code provided that all of the following findings must be made, where relevant in a particular case:
 - (1) There are unique physical circumstances or conditions (including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property) and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this chapter in the neighborhood or district in which the property is located; and
 - (2) Because of such physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of the chapter, and a variance is therefore necessary to enable the reasonable use of the property; and
 - (3) Such unnecessary hardship has not been created by the appellant; and
 - (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
 - (5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- B. Reapplication. The Zoning Officer shall refuse to accept a proposed application that is not materially or significantly different from an appeal on the same property that was denied by the Board within the previous year.
- C. Variance conditions. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Municipalities Planning Code¹⁴⁷ and this chapter and to protect the public health, safety and welfare.
- D. Planning Commission review of variance applications.

¹⁴⁶.Editor's Note: See 53 P.S. § 10101 et seq.

¹⁴⁷.Editor's Note: See 53 P.S. § 10101 et seq.

- (1) The Planning Commission shall be provided with an opportunity to review any proposed variance at a regular meeting prior to a decision by the Zoning Hearing Board. The Commission, at its option, may provide a written advisory review.
- (2) If such review is not received within the time limit within which the Board must issue a decision, or within 30 days of such application being sent to the Planning Commission, then the Board may make a decision without having received comments from the Planning Commission.

§ 400-84. Conditional uses and special exceptions.

- A. Applications. Applications for conditional uses and special exceptions shall, at a minimum, include the information required in § 400-84F. The Borough Planning Commission, Borough Council or the Zoning Hearing Board shall require any other information deemed necessary for the review of the proposal.
- B. Conditional uses. Uses specified as conditional uses shall be permitted only after review and approval pursuant to the express standards as provided for specific conditional uses in this chapter and in § 400-84D and any other applicable standards in this chapter.
 - (1) Expansions. Expansions or additions to uses classified as conditional uses shall also be considered conditional uses. The addition of an accessory structure shall not be considered a conditional use.
 - (2) Procedure.
 - (a) Submission. The applicant shall submit the application as follows:
 - [1] Five complete copies of any required plan shall be submitted to the Zoning Officer.
 - [2] The Zoning Officer shall refuse to accept an incomplete application which does not provide sufficient information to determine compliance with this chapter.
 - (b) Distribution. The Zoning Officer shall distribute copies of the site plan to the Planning Commission and the Borough Council. A minimum of one copy shall be retained in the Borough files. The Borough Fire Company should be given an opportunity for a review, if deemed appropriate by the Zoning Officer.
 - (c) Zoning Officer review. The Zoning Officer shall report in writing or in person to the Planning Commission or the Borough Council, stating whether the proposal complies with this chapter. The Zoning Officer may request a review by the Borough Engineer.
 - (d) Planning Commission review.
 - [1] The Planning Commission shall be provided with an opportunity to review any proposed conditional use at a regular meeting prior to a decision by the Borough Council. The Commission, at its option,

may provide a written advisory review.

- [2] If such review is not received within the time limit within which the Board must issue a decision, or within 30 days of such application being sent to the Planning Commission, then the Board may make a decision without having received comments from the Planning Commission.
- (e) Borough Council action. The Borough Council shall conduct hearings and make decisions in accordance with Sections 908 and 913.2 of the Pennsylvania Municipalities Planning Code, as amended.¹⁴⁸ In granting a conditional use, the Board may attach such reasonable conditions and safeguards (in addition to those expressed in this chapter) as it determines are necessary to implement the purposes of the Pennsylvania Municipalities Planning Code and this chapter, and to protect the public health, safety and welfare.
- C. Special exceptions. Uses specified as special exceptions shall be permitted only after review and approval by the Borough Zoning Hearing Board pursuant to the express standards as provided for specific special exceptions in this chapter and in § 400-84D.
 - (1) Expansions. Expansions or additions to uses classified as special exceptions shall also be considered special exceptions. The addition of an accessory structure shall not be considered a conditional use.
 - (2) Procedure.
 - (a) All applicants for a special exception use shall submit five sets of plans for the proposed use to the Zoning Officer together with a written application. Photographs of the existing site or buildings may also be requested to be presented by the applicant.
 - (b) All plans shall contain the information required in § 400-84F.
 - (c) Borough procedures.
 - [1] The Zoning Officer shall forward the application to the Zoning Hearing Board, the Planning Commission and the Zoning Hearing Board solicitor. A minimum of one copy shall be retained in the Borough files.
 - [2] The Zoning Officer shall, prior to the next Zoning Hearing Board meeting where the application will be discussed, review the plan to determine compliance with this chapter and report these findings to the Zoning Hearing Board.
 - (d) Planning Commission review of special exception uses.
 - [1] The Planning Commission shall be provided with an opportunity to review any proposed special exception use at a regular meeting prior

148. Editor's Note: See 53 P.S. §§ 10908 and 10913.2.

to a decision by the Zoning Hearing Board. The Commission, at its option, may provide a written advisory review.

- [2] If such review is not received within the time limit within which the Board must issue a decision, or within 30 days of such application being sent to the Planning Commission, then the Board may make a decision without having received comments from the Planning Commission.

(e) Zoning Hearing Board action on special exception uses.

- [1] The Board shall hear and decide such request for a special exception use under the procedures in § 400-82.
- [2] In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards (in addition to those expressed in this chapter) as it determines are necessary to implement the purposes of the Pennsylvania Municipalities Planning Code¹⁴⁹ and this chapter, and to protect the public health, safety and welfare.

D. Standards and criteria.

- (1) The standards and criteria applied to conditional uses and special exceptions are intended to ensure that the proposed use will be in harmony with the purposes, goals, objectives and standards of this chapter and other ordinances of the Borough. In addition to the applicable general provisions of this chapter and to the standards provided in this chapter for specific conditional uses and special exceptions, the following standards and criteria shall be applied in the review of applications for conditional uses and special exceptions:
 - (a) The proposed use shall be in harmony with purposes, goals, objectives and standards of the Borough Comprehensive Plan, this chapter and all other ordinances of the Borough.
 - (b) The proposal shall also be evaluated as to the degree to which the proposed location may be particularly suitable or unsuitable for the proposed use in terms of the physical characteristics of the site.
 - (c) The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, adjacent property values, or other matters affecting the public health, safety and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of this chapter or any other plan, program, map or ordinance of the Borough or other government agency having jurisdiction to guide growth and development.
 - (d) The proposed use shall not impose an undue burden on any of the

149. Editor's Note: See 53 P.S. § 10101 et seq.

improvements, facilities, utilities and services of the Borough, whether such services are provided by the Borough or some other entity. The applicant shall be wholly responsible for providing such improvements, facilities, utilities or services as may be required to adequately serve the proposed use when the same are not available or are inadequate to serve the proposed use in the proposed location. As part of the application and as a condition of approval of the proposed use, the applicant shall be responsible for establishing ability, willingness and binding commitment to provide such improvements, facilities, utilities and services in sufficient time and in a manner consistent with this and other ordinances of the Borough. The permit approval shall be so conditioned.

(e) In reviewing an application, the following additional factors shall be considered:

- [1] Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
- [2] Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
- [3] Location, arrangement, appearance and sufficiency of off-street parking and loading.
- [4] Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- [5] Adequacy of stormwater and drainage facilities stormwater leaving any site shall not exceed predevelopment levels, and facilities shall be designed to accommodate a ten-year storm.
- [6] Adequacy of water supply and sewage disposal facilities.
- [7] Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
- [8] Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- [9] Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

(f) Approval of application.

- [1] No application shall be approved unless it is found that, in addition to complying with each of the standards enumerated above, any of the applicable standards contained in this chapter shall be met. In instances where the supplemental standards contained herein do not

adequately protect the general health, safety and welfare of parties affected, all conditions and safeguards deemed necessary by the Board to protect the general health, safety and welfare and implement the purposes of this chapter and the Pennsylvania Municipalities Planning Code shall be imposed as conditions of approval in accord with Section 912.1 or 913.2 of the Pennsylvania Municipalities Planning Code,¹⁵⁰ as the case may be.

[2] Conditions which might be imposed shall include (but not be limited to) provisions for additional parking, traffic control, submission of landscaping plans for screening, setbacks, special measures addressing sales period activities, environmental controls and other measures which mitigate any potential adverse impact the use may have on adjoining uses.

(2) The applicant shall supply evidence regarding compliance with the express standards and criteria contained herein, and data or evidence may be accepted from protestants. Such evidence shall be evaluated relative to the injurious impact on the health, safety and welfare of the Borough, and the proposed use shall be approved with appropriate conditions or denied based on said evaluation.

- E. Limitation of approval. Any conditional use approval granted by the Borough Council and any special exception approval granted by the Zoning Hearing Board shall expire one year from the date such approval was granted if no building construction as approved has taken place or the use is not otherwise established as a functional and constructive activity prior to the expiration date. Upon such expiration, the said approval, and any permit issued subsequent thereto, shall be deemed null and void, and the developer shall be required to submit another application for the same. The Borough Council or Zoning Hearing Board, as the case may be, however, may grant an extension of the time limitations for good cause.
- F. Information required. The applicant shall supply the information required by § 400-78C of this chapter and evidence regarding compliance with the express standards and criteria contained herein, and data or evidence may be accepted from protestants. Such evidence shall be evaluated relative to the injurious impact on the health, safety and welfare of the Borough, and the proposed use shall be approved with appropriate conditions or denied based on said evaluation.

§ 400-85. Time limits on permits and variances.

- A. Zoning permit. After a variance is approved or a conditional or special exception approval is officially authorized under this chapter, then a zoning permit shall be secured by the applicant within 12 months of such approval; otherwise, such approval shall be deemed null and void, and the developer shall be required to submit another application for the same.
- B. Review completion. If the applicant submits complete plans for a subdivision or

150. Editor's Note: See 53 P.S. § 10912.1 or 10913.2.

land development approval or special exception or conditional use approval that is related to the variance or issuance of a permit under this chapter within the above time limits, then such time limits shall begin after such plan review is completed or such plan approval is granted.

- C. Extension. For good cause, the Zoning Officer may, upon application in writing stating the reasons therefor, extend in writing the twelve-month application period to up to 18 months.
- D. Expiration. If an applicant fails to obtain the necessary permits within the above time period or after having obtained the permit fails to diligently commence substantial construction within 12 months or allows interruptions in substantial construction of longer than six months, it shall be conclusively presumed that the applicant has waived, withdrawn or abandoned the approval, and all such approvals, variances and permits shall be deemed automatically rescinded.
- E. Completion. Any building construction shall be completed within 12 months of issuance of an applicable permit, unless a written extension is granted by the Zoning Officer for good cause. Otherwise, a permit shall be considered to have automatically expired at the end of such twelve-month period.

§ 400-86. Mediation.

Parties to proceedings authorized by this chapter and the Pennsylvania Municipalities Planning Code may use the mediation option as authorized by and in accord with Section 908.1 of said Code.¹⁵¹

§ 400-87. Time limits for appeals.

The time limitations for appeals shall be as follows:

- A. Zoning Hearing Board – County Court. No person shall be allowed to file any appeal with the Zoning Hearing Board later than 30 days after the officially issued decision by the Zoning Officer or appeal with the County Court of Common Pleas later than 30 days after the officially issued decision of the Borough Council or the Zoning Hearing Board, except as may be provided under Section 914.1 of the Pennsylvania Municipalities Planning Code.¹⁵²
- B. Temporary permits. This thirty-day time limit for appeal shall not apply to the revocation of a permit under § 400-78E.
- C. Subdivision or land development approval. The failure of an aggrieved person other than the landowner to appeal an adverse decision directly related to a preliminary subdivision or land development plan shall preclude an appeal from a final plan approval except in the case where the final submission substantially deviates from the approved preliminary plan.

¹⁵¹Editor's Note: See 53 P.S. § 10908.1.

¹⁵²Editor's Note: See 53 P.S. § 10914.1.

§ 400-88. Appeals to court and other administrative proceedings.

Appeals to court and other administrative proceedings shall be governed by Article X-A and Article IX of the Pennsylvania Municipalities Planning Code.¹⁵³

§ 400-89. Public utility exemptions.

See Section 619 of the Pennsylvania Municipalities Planning Code.¹⁵⁴

§ 400-90. Limited Borough exemption.

The minimum lot area requirements of this chapter shall not apply to uses or structures owned by the Borough for uses and structures that are intended for a legitimate governmental, recycling, public recreation, stormwater control or public health and safety purpose.

§ 400-91. Amendments.

The Borough Council may amend the Zoning Ordinance by complying with the requirements set forth in Article VI of the Pennsylvania Municipalities Planning Code.¹⁵⁵ A landowner who desires to challenge on substantive grounds the validity of an ordinance or map, or any provision thereof, which prohibits or restricts the use or development of land in which he has an interest, may submit a curative amendment to the governing body with a written request that his challenge and proposed amendment be heard and decided on as provided in Sections 609.1 and 916.1 of the Pennsylvania Municipalities Planning Code.¹⁵⁶

§ 400-92. Violations.

- A. Compliance. Failure to comply with any provision of this chapter; failure to secure or comply with a decision of the Borough Council or Zoning Hearing Board; or the failure to secure a permit, when required, prior to or (when ordered) after the erection, construction, extension or addition to a building or prior to or after the use or change of use of land; or failure to secure a certificate of use permit shall be violations of this chapter.
- B. Complaints. Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Zoning Officer, who shall record receipt of the said complaint and investigate and report thereon.
- C. Enforcement notice. When written notice of a violation of any of the provisions of this chapter shall be served by the Zoning Officer, personally or by certified mail, in the manner prescribed by Section 616.1 of the Pennsylvania Municipalities Planning Code¹⁵⁷ and set forth in this § 400-92C, such violation shall be

153.Editor's Note: See 53 P.S. § 11001-A et seq. and 53 P.S. § 10901 et seq., respectively.

154.Editor's Note: See 53 P.S. § 10619.

155.Editor's Note: See 53 P.S. § 10601 et seq.

156.Editor's Note: See 53 P.S. §§ 10609.1 and 10916.1.

157.Editor's Note: See 53 P.S. § 10616.1.

discontinued or corrected as set forth in said notice.

- (1) If it appears to the Borough that a violation of this chapter has occurred, the Borough shall initiate enforcement proceedings by sending an enforcement notice as provided in this § 400-92C.
- (2) The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.
- (3) An enforcement notice shall state at least the following:
 - (a) The name of the owner of record and any other person against whom the municipality intends to take action.
 - (b) The location of the property in violation.
 - (c) The specific violation, with a description of the requirements which have not been met, citing in each instance the applicable provisions of the ordinance.
 - (d) The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
 - (e) That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period of time in accordance with procedures set forth in this chapter.
 - (f) That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.
- (4) In any appeal of an enforcement notice to the Zoning Hearing Board, the Borough shall have the responsibility of presenting its evidence first.
- (5) Any filing fee paid by a party to appeal an enforcement notice to the Zoning Hearing Board shall be returned to the appealing party by the Borough if the Zoning Hearing Board, or any court in subsequent appeal, rules in the appealing party's favor.

§ 400-93. Penalties and remedies.

- A. Causes of action. In case any building, structure or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of any provisions of this chapter, the Borough Council or, with the approval of the Borough Council, an officer of the municipality, or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the Borough at

least 30 days prior to the time the action is begun by serving a copy of the complaint on the Borough Council. No such action may be maintained until such notice has been given.

B. Enforcement remedies.

- (1) Any person, partnership or corporation who or which has violated or permitted the violation of any of the provisions of this chapter shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than \$500 (state law) plus all court costs, including reasonable attorneys' fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or be payable until the date of the determination of a violation by the Magisterial District Judge. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the Magisterial District Judge determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the Magisterial District Judge, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorneys' fees collected for the violation of this chapter shall be paid over to the Borough.
- (2) The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per-diem fine pending a final adjudication of the violation and judgment.
- (3) Nothing contained in this section shall be construed or interpreted to grant to any person or entity, other than the Borough, the right to commence any action for enforcement pursuant to this section.

§ 400-94. Liability.

- A. Neither the approval nor the granting of any review, issuance of permit or approval related to construction, activity within the floodplain, site plan review, subdivision or land development approval erosion control, stormwater runoff, activity on steep slopes or any other review or permit of this chapter, by an officer, employee, consultant or agency of the Borough, shall constitute a representation, guarantee or warranty of any kind by the Borough or its employees, officials, consultants or agencies of the practicality or safety of any structure, use or subdivision and shall create no liability upon, nor a cause of action against, such public body, official, consultant or employee for any damage that may result pursuant thereto.
- B. If the Zoning Officer mistakenly issues a permit under this chapter, the Borough shall not be liable for any later lawful withdrawal of such permit for valid cause shown.

Disposition List

Chapter DL**DISPOSITION LIST****§ DL-1. Disposition of legislation.****KEY:**

NCM = Not Code material (legislation is not general or permanent in nature).

REP = Repealed effective with adoption of Code; see Ch. 1, Art. I.

NI = Not included in Code but saved from repeal.

NLP = New legislation is pending.

Enactment	Adoption Date	Subject	Disposition
Ord. No. 5-1974	12-30-1974	Intergovernmental cooperation: police services agreement	NCM
Ord. No. 1-1975	12-30-1974	Annual budget appropriation	NCM
Ord. No. 2-1975	12-30-1974	Tax rate for 1975	NCM
Ord. No. 3-1975	5-8-1975	Peace and good order: disorderly conduct	REP
Ord. No. 4-1975	6-12-1975	Vehicles and traffic: parking regulations amendment	NI; see Ch. 350
Ord. No. 5-1975	7-10-1975	Street acceptance	NCM
Ord. No. 6-1975	7-10-1975	Intergovernmental cooperation: police services agreement amendment	NCM
Ord. No. 7-1975	9-11-1975	Street acceptance	NCM
Ord. No. 8-1975	10-9-1975	Burning, open	Repealed by Ord. No. 2-1998
Ord. No. 1-1976	12-30-1975	Annual budget appropriation	NCM
Ord. No. 2-1976	12-30-1975	Tax rate for 1976	NCM
Ord. No. 3-1976	4-8-1976	Vehicles and traffic: parking regulations amendment	NI; see Ch. 350
Ord. No. 4-1976	5-13-1976	Cable franchise agreement	NCM
Res. No.	8-11-1977	Zoning fees	NCM
Ord. No. 1-1977	12-28-1976	Annual budget appropriation	NCM
Ord. No. 2-1977	12-28-1976	Tax rate for 1977	NCM
Ord. No. 3-1977	5-12-1977	Animals: control of animals amendment	Superseded by Ord. No. 5-2002
Ord. No. 4-1977	5-12-1977	Buildings, dangerous	Repealed by Ord. No. 3-1994

Enactment	Adoption Date	Subject	Disposition
Ord. No. 5-1977	12-30-1977	Vehicles and traffic: parking during snow season	NI; see Ch. 350
Ord. No. 6-1977	12-30-1977	Cable franchise agreement amendment	NCM
Ord. No. 7-1977	12-30-1977	Salaries and compensation: Council members	Ch. 93, Art. I
Ord. No. 1-1978	12-30-1977	Annual budget appropriation	NCM
Ord. No. 2-1978	12-30-1977	Tax rate for 1978	NCM
Ord. No. 3-1978	2-9-1978	Vehicles and traffic: snow and ice emergencies	NI; see Ch. 350
Ord. No. 4-1978	2-9-1978	Pool and billiard rooms	Repealed by Ord. No. 2-1983
Ord. No. 5-1978	6-22-1978	Bond anticipation note	NCM
Ord. No. 6-1978	7-13-1978	Vehicles and traffic: parking regulations amendment	NI; see Ch. 350
Ord. No. 7-1978	9-14-1978	Sewers and sewage disposal: holding tanks	REP
Ord. No. 8-1978	10-12-1978	Pensions: Police Pension Plan amendment	NI; see Ch. 64
Ord. No. 9-1978		Floodplain management	Superseded by Ord. No. 4-2020
Ord. No. 1-1979	12-29-1978	Tax rate for 1979	NCM
Res. No.	6-12-1980	Zoning fees	NCM
Ord. No. 1-1980	12-28-1979	Annual budget appropriation	NCM
Ord. No. 2-1980	12-28-1979	Tax rate for 1980	NCM
Ord. No. 3-1980	6-12-1980	Building construction amendment	Superseded by Ord. No. 6-1994
Ord. No. 4-1980	9-11-1980	Vehicles and traffic: traffic regulations amendment	NI; see Ch. 350
	12-29-1981	Annual budget appropriation	NCM
Ord. No. 1-1981	12-11-1980	Annual budget appropriation	NCM
Ord. No. 2-1981	12-11-1980	Tax rate for 1981	NCM
Ord. No. 3-1981	2-12-1981	Salaries and compensation: Tax Collector	Ch. 93, Art. II
	12-9-1982	Annual budget appropriation	NCM
Ord. No. 1-1982	12-29-1981	Tax rate for 1982	NCM
Ord. No. 2-1982	2-11-1982	Bond anticipation note	NCM

Enactment	Adoption Date	Subject	Disposition
Ord. No. 3-1982	8-12-1982	Cable franchise agreement amendment	NCM
Ord. No. 4-1982	10-14-1982	Sewers and sewage disposal: individual sewage disposal systems	Ch. 282, Art. I
	12-21-1983	Annual budget appropriation	NCM
Ord. No. 1-1983	12-9-1982	Tax rate for 1983	NCM
Ord. No. 2-1983	5-12-1983	Amusements: poolrooms, billiard rooms and amusement devices	Ch. 139, Art. I
Ord. No. 3-1983	5-12-1983	Alarms	Superseded by Ord. No. 6-1998
Ord. No. 4-1983	5-12-1983	Vehicles and traffic: traffic regulations amendment	NI; see Ch. 350
Ord. No. 5-1983	6-9-1983	Streets and sidewalks: excavations and openings amendment	Repealed by Ord. No. 2-1987
	12-13-1984	Annual budget appropriation	NCM
Ord. No. 1-1984	12-21-1983	Tax rate for 1984	NCM
Ord. No. 2-1984	3-8-1984	Bond anticipation note	NCM
	12-23-1985	Annual budget appropriation	NCM
Ord. No. 1-1985	12-13-1984	Tax rate for 1985	NCM
Ord. No. 2-1985	1-10-1985	Vehicles and traffic: traffic regulations amendment	NI; see Ch. 350
Ord. No. 3-1985	3-14-1985	Driveways	REP
Ord. No. 4-1985	6-13-1985	Floodplain management amendment	Superseded by Ord. No. 4-2020
Ord. No. 5-1985	7-11-1985	Taxation: realty transfer tax	Superseded by Ord. No. 8-1985
Ord. No. 7-1985	10-10-1985	Trees	Ch. 322
Ord. No. 8-1985	11-14-1985	Taxation: realty transfer tax	Repealed by Ord. No. 3-1987
	12-16-1986	Annual budget appropriation	NCM
Ord. No. 1-1986	12-23-1985	Tax rate for 1986	NCM
Ord. No. 2-1986	6-23-1986	Sewer construction agreement	NCM
Ord. No. 3-1986	6-23-1986	Sewers and sewage disposal: sewer connections	Ch. 282, Art. II
Ord. No. 4-1986	6-23-1986	Sewer construction agreement	NCM

Enactment	Adoption Date	Subject	Disposition
Ord. No. 5-1986	10-9-1986	Swimming pools	REP
	12-10-1987	Annual budget appropriation	NCM
Ord. No. 1-1987	12-16-1986	Tax rate for 1987	NCM
Ord. No. 2-1987	5-14-1987	Streets and sidewalks: excavations and openings	Ch. 294, Art. I
Ord. No. 3-1987	6-11-1987	Taxation: realty transfer tax	NLP; see Ch. 315, Art. I
Ord. No. 4-1987	8-13-1987	Incurring debt	NCM
Ord. No. 5-1987	9-10-1987	Littering	Ch. 236
Ord. No. 7-1987	10-8-1987	Vehicles and traffic: traffic regulations amendment	NI; see Ch. 350
Ord. No. 8-1987	11-12-1987	Incurring debt	NCM
Res. No.	5-12-1988	Zoning fees	NCM
	12-8-1988	Annual budget appropriation	NCM
Ord. No. 1-1988	12-10-1987	Tax rate for 1988	NCM
Ord. No. 2-1988	5-12-1988	Subdivision and land development	Repealed by Ord. No. 3-2005
Ord. No. 3-1988	5-27-1988	Zoning Map amendment	NCM
Ord. No. 4-1988	8-11-1988	Alcoholic beverages	Ch. 135
Ord. No. 1-1989	12-8-1988	Tax rate for 1989	NCM
Ord. No. 2-1989	7-13-1989	Vehicles and traffic: traffic regulations amendment	NI; see Ch. 350
Ord. No. 3-1989	9-14-1989	Adult uses and pornography: pornography	REP
Ord. No. 5-1989	12-14-1989	Pensions: nonuniformed employees	Repealed by Ord. No. 5-1999
Ord. No. 4-1992	10-8-1992	Burning, open amendment	Repealed by Ord. No. 2-1998
Ord. No. 1-1993	1-14-1993	Budget and tax rate for 1993	NCM
Ord. No. 2-1993	6-10-1993	Vehicles and traffic: parking regulations amendment	NI; see Ch. 350
Ord. No. 1-1994	1-13-1994	Approval and financing of sewer construction project	NCM
Ord. No. 2-1994	1-13-1994	Budget and tax rate for 1994	NCM
Ord. No. 3-1994	5-12-1994	Buildings, dangerous repealer	Repealer only
Ord. No. 4-1994	5-12-1994	Buildings, dangerous	Ch. 154
Ord. No. 5-1994	5-12-1994	Insurance: fire insurance claims	Ch. 224, Art. I

Enactment	Adoption Date	Subject	Disposition
Ord. No. 6-1994	10-13-1994	Building construction: BOCA National Building Code	REP
Ord. No. 7-1994	10-13-1994	Floodplain management amendment	Superseded by Ord. No. 4-2020
Ord. No. 1-1995	1-12-1995	Budget and tax rate for 1995	NCM
Ord. No. 2-1995	8-3-1995	Vehicles and traffic: parking regulations amendment	NI; see Ch. 350
Ord. No. 1-1996	1-11-1996	Budget and tax rate for 1996	NCM
Ord. No. 2-1996	9-12-1996	Curfew	Ch. 175
Ord. No. 1-1997		Budget and tax rate for 1997	NCM
Ord. No. 2-1997		Soil erosion and sediment control	Ch. 286
Ord. No. 3-1997	7-17-1997	Pensions: Police Pension Plan amendment	NI; see Ch. 64
Ord. No. 4-1997	12-11-1997	Quitclaim deed	NCM
Ord. No. 5-1997	12-11-1997	Acceptance of deeds of dedication	NCM
Ord. No. 1-1998		Budget and tax rate for 1998	NCM
Ord. No. 2-1998	3-12-1998	Burning, open	Repealed by Ord. No. 2-2010
Ord. No. 3-1998	5-14-1998	Vehicles and traffic: traffic regulations amendment	NI; see Ch. 350
Ord. No. 4-1998		Zoning amendment	See Ch. 400
Ord. No. 5-1998	8-20-1998	Intergovernmental cooperation: local government investment trust	NCM
Ord. No. 6-1998	8-20-1998	Alarms	Ch. 131
Ord. No. 1-1999		Budget and tax rate for 1999	NCM
Ord. No. 2-1999	2-11-1999	Police Department: warrantless arrests	Ch. 69, Art. I
Ord. No. 3-1999	2-11-1999	Buildings, numbering of amendment	REP
Ord. No. 4-1999	2-11-1999	Street name change	NCM
Ord. No. 5-1999	5-20-1999	Pensions: Pennsylvania Municipal Retirement System	NI; see Ch. 64
Ord. No. 6-1999	10-21-1999	Acceptance of conveyance	NCM
Ord. No. 1-2000	1-13-2000	Budget and tax rate for 2000	NCM
Ord. No. 2-2000	6-8-2000	Acceptance of conveyance	NCM

Enactment	Adoption Date	Subject	Disposition
Ord. No. 3-2000	6-8-2000	Solid waste: garbage and rubbish collection amendment	Superseded by Ord. No. 6-2001
Ord. No. 4-2000	6-8-2000	Vehicles, abandoned and junked repealer	Repealer only
Ord. No. 5-2000	6-8-2000	Vehicles, abandoned and junked	Ch. 341
Ord. No. 6-2000	6-8-2000	Burning, open amendment	Repealed by Ord. No. 2-2010
Ord. No. 7-2000	12-14-2000	Animals: noise by animals	Ch. 143, Art. I
Ord. No. 1-2001		Budget and tax rate for 2001	NCM
Ord. No. 2-2001	4-4-2001	Tax and revenue anticipation note	NCM
Ord. No. 3-2001	9-13-2001	Zoning amendment	See Ch. 400
Ord. No. 6-2001	12-27-2001	Solid waste: collection and disposal	Ch. 290, Art. I
Ord. No. 3-2002	7-16-2002	Vehicles and traffic: traffic regulations amendment	NI; see Ch. 350
Ord. No. 4-2002		Authorization to execute emergency services mutual aid agreement	NCM
Ord. No. 5-2002		Animals: control of animals	Superseded by Ord. No. 3-2006
Ord. No. 2-2003		Budget and tax rate for 2003	NCM
Ord. No. 3-2003	2-17-2003	Adult uses	Ch. 127
Ord. No. 4-2003	2-13-2003	Referendum on bottle clubs	NCM
Ord. No. 5-2003	2-13-2003	Records: open records policy	Ch. 82, Art. I
Ord. No. 6-2003	4-10-2003	Solid waste: collection and disposal amendment	Ch. 290, Art. I
Ord. No. 7-2003	5-8-2003	Pensions: Police Pension Plan amendment	NI; see Ch. 64
Ord. No. 8-2003	5-8-2003	Zoning amendment	See Ch. 400
Ord. No. 10-2003		Tax and revenue anticipation note	NCM
Ord. No.	11-13-2003	Zoning amendment	Ch. 400
Ord. No. 1204-A-2004	12-23-2004	Budget and tax rate for 2005	NCM
Ord. No. 1204-B-2004	12-23-2004	Tax and revenue anticipation note	NCM
Ord. No. 2-2005	7-14-2005	Burning, open amendment	Repealed by Ord. No. 2-2010

Enactment	Adoption Date	Subject	Disposition
Ord. No. 3-2005		Subdivision and land development	Ch. 300
Ord. No. 4-2005	8-16-2005	Rental property: rental occupancy reports	Ch. 271, Art. I
Ord. No. 2-2006	2-28-2006	Solid waste: collection and disposal amendment	Ch. 290, Art. I
Ord. No. 3-2006	9-12-2006	Animals: control of animals	Ch. 143, Art. II
Ord. No. 8-2006	1-30-2006	Taxation: realty transfer tax amendment	NLP; see Ch. 315, Art. I
Ord. No. 9-2006		Vehicles and traffic amendment	Tabled
Ord. No.		Budget and tax rate for 2006	NCM
Ord. No. 10-2006	12-28-2006	Budget and tax rate for 2007	NCM
Ord. No. 1-2007	4-12-2007	Vehicles and traffic: parking regulations amendment	NI; see Ch. 350
Ord. No. 3-2007	8-9-2007	Parks and recreation areas	Ch. 255
Ord. No. 4-2007		Vehicles and traffic amendment	Tabled 8-9-2007
Ord. No. 5-2007	10-11-2007	Property maintenance	Ch. 263
Ord. No. 6-2007	10-11-2007	Adult uses	Ch. 127
Ord. No. 7-2007	12-13-2007	Solid waste: recycling	Ch. 290, Art. II
Ord. No. 1-2008	1-10-2008	Budget and tax rate for 2008	NCM
Ord. No. 2-2008	5-8-2008	Streets and sidewalks: maintenance of driveway culverts, ditches and gutters	Ch. 294, Art. II
Ord. No. 3-2008	6-12-2008	Intergovernmental cooperation: multi-municipal planning	NCM
Ord. No. 4-2008	12-11-2008	Furnaces, outdoor	Ch. 202
Ord. No. 5-2008	12-22-2008	Budget and tax rate for 2009	NCM
Ord. No. 1-2009	2-12-2009	Solid waste: collection and disposal amendment	Ch. 290, Art. I
Ord. No. 2-2009	6-11-2009	Vehicles and traffic: traffic regulations amendment	NI; see Ch. 350
Ord. No. 3-2009	6-11-2009	Fireworks	Ch. 191
Ord. No. 4-2009	12-30-2009	Comprehensive Plan	Ch. 166
Ord. No. 5-2009	12-30-2009	Budget and tax rate for 2010	NCM
Ord. No. 1-2010	3-11-2010	Solid waste: collection and disposal amendment	Ch. 290, Art. I
Ord. No. 2-2010	5-13-2010	Burning, open	Ch. 162

Enactment	Adoption Date	Subject	Disposition
Ord. No. 3-2010	12-21-2010	Pensions: Police Pension Plan amendment	NI; see Ch. 64
Ord. No. 1-2011	1-13-2011	Budget and tax rate for 2011	NCM
Ord. No. 2-2011	2-10-2011	Solid waste: collection and disposal amendment	Ch. 290, Art. I
Ord. No. 3-2011	3-10-2011	Acceptance of roads, drainage facilities and easement areas	NCM
Ord. No. 4-2011	4-14-2011	Incurring debt	NCM
Ord. No. 5-2011	11-10-2011	Vehicles and traffic: parking regulations amendment	NI; see Ch. 350
Ord. No.		Budget and tax rate for 2012	NCM
Ord. No. 3-2012	3-8-2012	Stormwater management	Ch. 292
Ord. No. 1-2013	1-10-2013	Budget and tax rate for 2013	NCM
Ord. No. 2-2013	1-10-2013	Solid waste: collection and disposal amendment	Ch. 290, Art. I
Ord. No. 3-2013	9-12-2013	Acceptance of donation	NCM
Ord. No. 2-2014	2-19-2014	Solid waste: collection and disposal amendment	Ch. 290, Art. I
Ord. No. 3-2014	2-19-2014	Budget and tax rate for 2014	NCM
Ord. No. 4-2014	2-19-2014	Vehicles and traffic: parking regulations amendment	NI; see Ch. 350
Ord. No. 5-2014		Cable franchise agreement	NCM
Ord. No. 6-2014	10-9-2014	Cable franchise agreement	NCM
Ord. No. 1-2015	2-12-2015	Budget and tax rate for 2015	NCM
Ord. No. 2-2015		Land conveyance agreement	NCM
Ord. No. 3-2015		Solid waste: collection and disposal amendment	Ch. 290, Art. I
Ord. No. 4-2015	3-12-2015	Intergovernmental cooperation: police services agreement	NCM
Ord. No. 5-2015	3-12-2015	Intergovernmental cooperation: police services agreement	NCM
Ord. No. 6-2015	9-10-2015	Intergovernmental cooperation: multi-municipal comprehensive plan	NI; see Ch. 166
Ord. No. 7-2015	11-12-2015	Vehicles and traffic: parking regulations amendment	NI; see Ch. 350
Ord. No. 1-2016	1-14-2016	Annual budget appropriation	NCM

Enactment	Adoption Date	Subject	Disposition
Ord. No. 2-2016	1-14-2016	Pensions: municipal pension plan	NI; see Ch. 64
Ord. No. 3-2016	2-11-2016	Vehicles and traffic: parking regulations amendment	NI; see Ch. 350
Ord. No. 4-2016	4-14-2016	Increasing indebtedness	NCM
Ord. No. 5-2016	6-9-2016	Solid waste: collection and disposal amendment	Ch. 290, Art. I
Ord. No. 6-2016	6-16-2016	Increasing indebtedness amendment	NCM
Ord. No. 7-2016	8-11-2016	Gatherings, large	Ch. 209
Ord. No. 1-2017	1-12-2017	Appropriation	NCM
Ord. No. 2-2017	1-12-2017	Solid waste: collection and disposal amendment	Ch. 290, Art. I
Ord. No. 3-2017	11-9-2017	Sewers and sewage disposal: sewer connections amendment	Ch. 282, Art. II
Ord. No. 4-2017	11-9-2017	Adoption of Code	Ch. 1, Art. I
Ord. No. 1-2018	1-2-2018	Appropriation	NCM
Ord. No. 2-2018	1-2-2018	Solid Waste: Collection and Disposal Amendment	Ch. 290, Art. I
Ord. No. 3-2018	12-13-2018	Streets and Sidewalks: Construction Within Rights-of-Way	Ch. 294, Art. III

Ord. No.	Adoption Date	Subject	Disposition	Supp. No.
1-2019	1-10-2019	Appropriation	NCM	3
2-2019	1-10-2019	Fees	NCM	3
1-2020	2-13-2020	Appropriation	NCM	3
2-2020	2-13-2020	Solid Waste Amendment	Ch. 290	3
3-2020	4-9-2020	Tax and Revenue Anticipation Note	NCM	3
4-2020	7-30-2020	Floodplain Management	Ch. 197	3
1-2021	1-14-2021	Appropriation	NCM	3
2-2021	1-14-2021	Solid Waste Amendment	Ch. 290	3

