

ARTICLE VIII

ADMINISTRATION AND ENFORCEMENT

800 GENERAL

This Section outlines the procedures for administration and enforcement of this Ordinance as well as procedures for challenges and appeals of decisions rendered under this Ordinance.

801 FEES

- A. The Union County Board of Commissioners shall establish by Resolution the required subdivision and land development plan application review fees to cover costs incurred by the County for reviewing and processing applications submitted and determining compliance under this Ordinance.
- B. Review fees shall include but not be limited to covering the expenses and costs of the following:
 - 1. County administrative and technical staff employees involved in the review;
 - 2. Charges by the County's professional consultants, including but not limited to expert witnesses, attorneys, engineers, planners or other required specialists for undertaking reviews, reports, field trips, and recommendations, including attendance at necessary meetings and public hearings, for the preparation of any legal or other documents required by the proposed Plan, and also for the inspection of improvements installed by the Applicant;
 - 3. Fees charged to the County to cover the cost of any review, report or recommendation or application submitted to other appropriate agencies shall also be paid by the applicant; and
 - 4. Advertising, notices or other expenses incurred in the processing of the proposed Plan.
- C. An initial application fee is due at the time of plan submission and a plan will not be accepted without the applicable review fee. A copy of the most recent Fee Resolution is available from the Commission.
- D. Additional review fees may be required to cover the costs of additional services in excess of the initial fees collected at the time of plan application and may include, but not be limited to the following:
 - 1. Cost of preparation and advertisement of necessary legal or other public notices or ads;
 - 2. Cost of required stenographic services;
 - 3. Cost of retaining professional advisors and consultants; and
 - 4. Cost of Commission Engineer and/or other special consultants to review plans and to monitor and inspect improvements both during and after construction.
- E. All fees shall be payable to the County of Union. A copy of the most recent Fee Resolution is available from the Commission.

- F. Applicable review fees shall be submitted at the time of plan application, and engineering and/or consultant review or inspection fees shall be submitted immediately upon receiving an invoice for such fees.
- G. Fees shall be reasonable, and shall include charges for staff, Commission Engineer or other consultants necessary to review plans and to monitor construction and inspect improvements.
- H. An applicant may dispute the amount of review and inspection fees in accordance with the procedures for fee dispute resolution contained in Sections 503 (1) and 510 (g) of the Pennsylvania Municipalities Planning Code, Act 247 of 1968, P.L. 805, (53 P.S. 10101, et seq.) as from time to time reenacted and amended.

802 PAST DUE OR UNPAID FEES

- A. The Commission shall not accept new applications for subdivision or land development proposals from applicants with past due or unpaid fees until all such payments in arrears are made in full including any accrued interest.
- B. The Commission shall not approve applications for subdivision or land development submitted by applicants with past due or unpaid fees until all such payments in arrears are made in full including any accrued interest.

803 MODIFICATIONS

- A. An applicant may request the grant of a modification by the Commission to any mandatory provision(s) of this Ordinance.
- B. All modification requests shall be in writing on a Modification Request Form and shall accompany the application for subdivision or land development. Modification Request Form is in Appendix K.
- C. All modification requests shall include the following:
 - 1. Provision(s) of the Ordinance involved
 - 2. The grounds and facts of unreasonableness or hardship on which the request is based or evidence of equal or better results.
 - 3. The minimum modification necessary.
- D. The Commission shall grant modifications if the applicant demonstrates that all of the following criteria which apply are met:
 - 1. That literal compliance with the mandatory provision(s) of the Ordinance is unreasonable or causes unique and undue hardship as it applies to the particular land being developed or subdivided.
 - 2. The need for the modification is not a self-created hardship.
 - 3. The modification request is not based upon an economic justification.
 - 4. The granting of the modification will not detract from the character of the surrounding area.

5. The granting of the modification will not have the effect of nullifying the intent and purpose of the ordinance or be contrary to the public interest.
 6. The modification is the minimum necessary.
 7. The modification can be demonstrated to provide equal or better results.
- E. In granting modifications the Commission may impose such conditions as will, in its judgment, encourage innovative design and/or secure substantially the objectives of the standards and requirements of this Ordinance.
- F. The applicant shall note all modifications granted on the plan.
- G. Commission staff shall not have the authority to grant modifications to this Ordinance.

804 RIGHT TO CHALLENGE AND APPEAL

- A. **Appeal of Staff Decisions.** Any applicant or person aggrieved by a finding, decision, or recommendation by staff with respect to approval or disapproval of a plan may appeal the action to the Commission at its next scheduled meeting if a Staff Action Appeal Form is filed fifteen (15) days prior to the meeting date. Refer to Appendix D for a copy of the Appeal Form.
- B. **Appeal of Commission Decisions.** Any applicant or person aggrieved by a finding, decision, or recommendation of the Commission with respect to the approval or disapproval of a plan or modification request may appeal to the Union County Court of Common Pleas as provided for in the Pennsylvania Municipalities Planning Code, Act 247 of 1968, P.L. 805, (53 P.S. 11001-A, et seq.) as from time to time reenacted and amended.
- C. **Mediation.** As an alternative to an adjudicatory appeal of a Commission decision, an applicant may request the use of mediation as an aid in resolving the dispute. The Commission is not obligated in any manner to approve the mediation option, and the merits of such requests shall be evaluated on a case-by-case basis. Participation in mediation shall be wholly voluntary by the parties, and shall not be interpreted as expanding or limiting police powers or as modifying any principles of substantive law. Mediation, when approved by the Commission, shall be conducted as follows:
1. The parties must develop and agree to terms and conditions of funding mediation.
 2. The selected mediator shall be agreed upon by both parties and at a minimum shall have a working knowledge of subdivision and land development procedures and demonstrated skills in mediation.
 3. The parties shall agree on time limits for completing mediation.
 4. The parties may negotiate and agree upon suspending time limits otherwise authorized by this Ordinance and the Pennsylvania Municipalities Planning Code, Act 247 of 1968, P.L. 805, (53 P.S. 10101, et seq.) as from time to time reenacted and amended.
 5. All parties with an interest in the mediation shall be identified and afforded an opportunity to participate.
 6. Subject to legal constraints, the parties shall determine whether some or all of the mediation sessions shall be open or closed to the public.

7. Parties shall assure that mediated solutions are in writing and signed by the parties, and become subject to review and approval by the Commission.
8. Parties agree that offers or statements made in the mediation sessions, excluding the final written mediated agreement, shall be admissible as evidence in any subsequent judicial or administrative proceeding.

805 RECORDS

The Commission shall keep for the public record a written record of all activity related to plans upon which action is taken, including all requests for and action taken on modifications.

806 RIGHT OF ENTRY

Upon presentation of proper credentials, duly authorized representatives of the County and/or Commission may enter at reasonable times upon any property under jurisdiction of this Ordinance to inspect the condition of the properties, facilities, and improvements in regard to any aspect regulated by this Ordinance.

807 ORDINANCE VIOLATIONS

- A. **Discovery of Violation.** Upon discovery of an alleged violation of this Ordinance, the Commission shall notify the municipality in which the affected property is located of the unlawful action and shall request that the municipality refuse to issue any permit or grant any approval necessary to further improve or develop the property.
- B. **Written Notice.** The Commission shall notify an applicant, developer, and/or property owner of violations of this Ordinance in writing, by certified mail “return receipt requested” or by hand carried delivery, immediately upon being made aware of such violations. Notices of violation issued by the Commission shall state the facts pertaining to the violation, cite those provisions of the Ordinance in violation, specify a time within which the violation shall be corrected in order to prevent further enforcement action, and indicate the applicants' right to an appeal.
- C. **Cease and Desist.** Any person, partnership, or corporation notified of a violation of this Ordinance shall immediately cease and desist such activity until the matter is resolved to the Commission’s satisfaction.

808 PREVIOUS VIOLATIONS

- A. Where an application is proposed for a tract of land, portions of which have previously been subdivided or developed in violation of this Ordinance or the Union County Land Subdivision and Development Ordinance of 1969 as amended, such application shall include a description and plan detailing all previous lots sold or transferred without proper approval.
- B. The Commission reserves the right to require that all lands subdivided or developed without proper approval of the Commission meet the minimum standards of this Ordinance.
- C. The Commission further reserves the right to review, approve, or disapprove all subdivisions and land developments already recorded in the Union County Recorder of Deeds Office if such plans do not meet the minimum requirements of this Ordinance, were recorded without prior review or approval of the Commission, and/or do not meet applicable provisions of the Pennsylvania Municipalities Planning Code, Act 247 of 1968, P.L. 805, (53 P.S. 10101, et seq.) as from time to time reenacted and amended.

809 PREVENTIVE REMEDIES

- A. **Authority to Initiate Court Action.** In addition to other remedies the County may institute and maintain appropriate actions in law or equity to restrain, correct or abate violations, to prevent unlawful construction, to recover damages, and to prevent illegal occupancy of a building, structure or premise. 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.
- B. As provided by Section 515.1(b) of the Pennsylvania Municipalities Planning Code, Act 247 of 1968, P.L. 805, (53 P.S. 10515.1 (b), et seq.) as from time to time reenacted and amended, the Commission 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 Ordinance or the Union County Land Development and Subdivision Ordinance of 1969 as amended. This authority to deny such 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.
- C. As an additional condition for issuance of a permit or the granting of approval to any owner, current owner, vendee, or lessee for the development of any such real property, the Commission may require compliance with the conditions that would have applied to the property at the time the applicant acquired an interest in the real property.

810 INJUNCTIONS

The Commission and staff shall have the power and authority to seek legal redress by an action for injunction brought before the appropriate court of equity, jurisdiction to enjoin such transfer, sale or agreement to transfer or sell, and/or to enjoin any type of construction or improvement by an applicant or landowner where a violation of this Ordinance has occurred, and to enjoin the Register and Recorder of Deeds from the recordation of any unapproved subdivision or land development plan or deed of sale made in violation of this Ordinance.

811 ENFORCEMENT REMEDIES

- A. Any person, partnership, or corporation who or which has violated any provision of this Ordinance, shall, upon being found liable therefore in a civil enforcement proceeding commenced by Union County, pay a judgment of not more than \$500.00 plus all court costs, including reasonable attorney fees incurred by the County as a result thereof.
- B. No judgment shall commence or be imposed, levied, or payable until the date of determination by a District Justice.

- C. If the defendant neither pays nor appeals the decision in a timely manner, Union County, by or through its agent the Union County Planning Commission, may enforce the judgment pursuant to the applicable rules of civil procedure.
- D. Each day that a violation continues shall constitute a separate violation, unless the District Justice or the Judge of the Union County Court of Common Pleas, 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 that event, there shall be deemed to have been only one such violation until the fifth day following the date of determination of a violation by the District Justice or the Judge of the Union County Court of Common Pleas, and thereafter each day that a violation continues shall constitute a separate violation.
- E. All judgments, costs and reasonable attorney fees collected for the violation of this Ordinance shall be paid to the County of Union.
- F. The Union County Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgment pending final adjudication of the violation and judgment.
- G. Nothing contained in this Section shall be construed or interpreted to grant to any person or entity other than Union County and its agent, the Union County Planning Commission, the right to commence any action for enforcement pursuant to this Section.