

ARTICLE XX
APPEALS TO COURT

SECTION 20.01 - LAND USE APPEALS. The procedures set forth in this Article shall constitute the exclusive mode for securing review of any decision rendered pursuant to Article XVIII or deemed to have been made under this Ordinance.

SECTION 20.02 - JURISDICTION AND VENUE ON APPEAL: TIME FOR APPEAL. All appeals from all land use decisions rendered pursuant to Article XVIII shall be taken to court of common pleas of the judicial district wherein the land is located and shall be filed within thirty (30) days after entry of the decision as provided in 42 Pa.C.S. ss 5572 (relating to time of entry of order) or in the case of deemed decision within thirty (30) days after the date upon which notice of said deemed decision is given as set forth in Section 18.04 J. of this Ordinance.

SECTION 20.03 - APPEALS TO COURT: COMMENCEMENT: STAY OF PROCEEDINGS.

- A. Land use appeals shall be entered as of course by the prothonotary or clerk upon filing of a land use appeal notice which concisely sets forth the grounds on which the appellant relies. The appeal notice need not be verified. The land use appeal notice shall be accompanied by a true copy thereof.
- B. Upon filing of a land use appeal, the prothonotary or clerk shall forthwith, as of course, send to the Board of Supervisors, Zoning Hearing Board or agency whose decision has been appealed, by registered or certified mail, the copy of the land use appeal notice, together with a writ of certiorari commanding said Board of Supervisors, Zoning Hearing Board or agency, within twenty (20) days after receipt thereof, to certify to the court its entire record in the matter in which the land use appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to the Board of Supervisors, Zoning Hearing Board or agency at the time it received the writ of certiorari.
- C. If the appellant is a person other than the landowner of the land directly involved in the decision or action appealed from, the appellant, within seven (7) days after the land use appeal is filed, shall serve a true copy of the land use appeal notice by mailing said notice to the landowner or his attorney at his last known address. For identification of such landowner, the appellant may rely upon the record of the municipality and, in the event of good faith mistakes as to such identity, may make such service nunc pro tunc by leave of court.

- D. The filing of an appeal in court under this section shall not stay the action appealed from, but the appellants may petition the court having jurisdiction of land use appeals for a stay. If the appellants are persons who are seeking to prevent a use or development of the land of another, whether or not a stay is sought by them, the landowner whose use or development is in question may petition the court to order the appellants to post bond as a condition to proceeding with the appeal. After the petition for posting a bond is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the landowners to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for posting a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court. The question of the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the respondent to the petition for posting a bond to post a bond shall be interlocutory. If an appeal is taken by a respondent to the petition for posting a bond from an order of the court dismissing a land use appeal for refusal to post a bond, such responding party, upon motion of petitioner and after hearing in the court having jurisdiction of land use appeals, shall be liable for all reasonable costs, expenses, and attorney fees incurred by the petitioner.

SECTION 20.04 - INTERVENTION. Within the thirty (30) days first following the filing of a land use appeal, if the appeal is from a board or agency of the Township, the Township and any owner or tenant of property directly involved in the action appealed from may intervene as of course by filing a notice of intervention, accompanied by proof of service of the same, upon each appellant or each appellant's counsel of record. All other intervention shall be governed by the Pennsylvania Rules of Civil Procedure.

SECTION 20.05 - HEARING AND ARGUMENT OF LAND USE APPEAL. If, upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, a judge of the court may hold a hearing to receive additional evidence, may remand the case to the body, agency or officer whose decision or order has been brought up for review, or may refer the case to a referee to receive additional evidence, provided that appeals brought before the court pursuant to Section 18.10 shall not be remanded for further hearings before any body, agency or officer of the Township. If the record below includes findings of fact made by the Board of Supervisors, Zoning Hearing Board or agency whose decision or action is brought up for review and the court does not take additional evidence or appoint a referee to take additional evidence, the findings of the Board of Supervisors, Zoning Hearing Board

or agency shall not be disturbed by the court if supported by substantial evidence. If the record does not include findings of fact, or if additional evidence is taken by the court or by a referee, the court shall make its own findings of fact based on the record below as supplemented by the additional evidence, if any.

SECTION 20.06 - JUDICIAL RELIEF.

- A. In a land use appeal, the court shall have power to declare any ordinance or map invalid and set aside or modify any action, decision or order of the Board of Supervisors, agency or officer of the Township brought up on appeal.
- B. If the court finds that a n ordinance or map, ora decision or order thereunder, which has been brought up for review unlawfully prevents or restricts a dvelopment or use which has been described by the landowner through plans and other materials submitted to the Board of Supervisors, agency or officer of the Township whose action or failure to act is in question on the appeal, it may order the described development or use approved as to all elements or it may order it approved as to some elements and refer other elements to the Board of Supervisors, agency or officer having jurisdiction thereof for further proceedings, including the adoption of alternative restrictions, in accordance with the court's opinion and order.
- C. Upon motion by any of the parties or upon motion by the court, the judge of the court may hold a hearing or hearings to receive additional evidence or employ experts to aid the court to frame an appropriate order. If the court employs an expert, the report or evidence of such expert shall be available to any party and he shall be subject to examination or cross-examination by any party. He shall be paid reasonable compensation for his services which may be assessed against any or all of the parties as determined by the court. The court shall retain jurisdiction of the appeal during the pendency of any such further proceedings and may, upon motion of the landowner, issue such supplementary orders as it deems necessary to protect the rights of the landowner as declared in its opinion and order.
- D. The fact that the plans and other materials are not in a form or are not accompanied by other submissions which are required for final approval of the development or use in question or for the issuance of permits shall not prevent the court from granting the definitive relief authorized. The court may act upon preliminary or sketch plans by framing its decree to take into account the need for further submissions before final approval is granted.

