



# Borough Incorporation and Local Government Trends Analysis



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# Table of Contents

<b>Introduction.....</b>	<b>4</b>
<b>PART I.....</b>	<b>6</b>
<b>1.1 Borough Incorporation History.....</b>	<b>6</b>
Table 1 – Significant Changes to Borough Incorporation Procedures.....	7
Historical Incorporation Trends in Pennsylvania.....	8
Table 2 – New Municipalities Formed from Portions of Existing Units.....	8
<b>1.2 Borough Incorporation Process .....</b>	<b>9</b>
Figure 1 – The Incorporation Process.....	10
Filing a Petition for Incorporation: Incorporation Preconditions .....	11
Figure 2 – Example: Majority Territory Freeholder Requirement.....	12
Incorporation Desirability: The Borough Advisory Committee .....	13
Section 202.1(b) – Incorporation Desirability Factors.....	13
<b>1.3 Incorporation Cases.....</b>	<b>15</b>
Figure 3 – Timeline of Recent Borough Petition Filings.....	15
Incorporation Law Applicability .....	16
Chilton Proposal .....	16
New Morgan .....	17
Treasure Lake.....	19
Planning.....	21
Financial Impact .....	22
Economic Segregation .....	23
Community Support Services .....	23
Bear Creek Village .....	23
Treasure Lake and Bear Creek Village: Similarities.....	24
Treasure Lake and Bear Creek Village: Differences .....	26
Pocono Raceway .....	26
Seven Fields .....	28
New Incorporation Prognosis .....	29
New Development Incorporations.....	31
<b>PART II.....</b>	<b>33</b>
<b>2.1 Trends &amp; Research: Demographics and Community Planning .....</b>	<b>33</b>
Urbanization.....	33
Urban Areas in Pennsylvania.....	34
Table 3 – Urbanized Areas.....	34
Figure 4 – Other Boroughs in Urbanized Areas (UAs).....	35
Table 4 – Urban Clusters .....	36
Figure 5 – TIGERweb Map: Urban Clusters.....	37
Figure 6 – Municipal Distribution of the Lancaster UA.....	38

Generational Trends .....	39
Figure 7 – Generational Cohorts 2014-2050: Population Change by Generation.....	39
Housing Market Impacts .....	39
Figure 8 – Pennsylvanians Aged 20-30, Share of Owners v. Renters .....	40
Figure 9 – Average Annual Increase in Rental Households by Decade .....	41
Aging in Pennsylvania.....	42
Changing Housing Demands for an Aging Population.....	42
Community Planning Trends .....	43
Sustainability.....	44
Smart Growth and New Urbanism .....	44
Table 5 – Development Characteristics: Sprawl v. Smart Growth .....	45
Public Transit, Multimodal Transportation and Land Use.....	47
Figure 10: The Land-Use Effect of Transit.....	48
<b>2.2 Opportunities .....</b>	<b>50</b>
Community Planning .....	50
State Support .....	51
Transit Revitalization Investment District (TRID) .....	51
Multimodal Transportation Fund .....	52
Pennsylvania Infrastructure Bank.....	52
Smart Growth/New Urbanism and the Borough Desirability Factors.....	53
Urbanization and Generational Trends .....	53
Figure 11 – Residential Property Types, Investment/Development Prospects for 2015.....	54
Serving an Aging Population.....	55
Suburban Retrofitting .....	56
<b>Conclusion.....</b>	<b>58</b>



# Introduction

*Over the past 35 years,* a handful of key court decisions along with several amendments to the Borough Code have given more definition to a seemingly archaic borough incorporation process. The Pennsylvania borough incorporation procedure, frequently employed from the 19<sup>th</sup> century to mid-20<sup>th</sup> century, has been utilized with much less frequency following World War II as a sprawling suburbanized society has flourished. With new trends of more concentrated, neo-traditional urban development pervading the community planning field, re-evaluation of the state's borough incorporation process is warranted. Additionally, a recent case, decided in September 2013, coupled with a newly amended Borough Code (2012, 2014), presents a good opportunity to reevaluate the borough incorporation process. This review provides an opportunity to learn from past incorporation successes and failures and explores how the incorporation process may be best utilized in the future.

This incorporation study is not intended to replace legal counsel, although it will touch on legal issues; but rather, the intent of this study is to provide insights and help prospective petitioners' groups—groups of stakeholders petitioning for borough incorporation—to understand incorporation's inherent complexities. Although the borough incorporation process is clearly guided by Chapter 2 of the Borough Code, it is evident from prior incorporation cases that satisfying statutory incorporation preconditions does not guarantee the right to form a new borough in the Commonwealth. The incorporation process is not only legal, but also political, requiring strategic planning, collaboration, consensus building and leadership. The later elements related to successful incorporation petitions are likely the most challenging for petitioning groups as they require more than just checking boxes and satisfying outlined legal requirements. Part I of this analysis not only outlines the express statutory requirements that must be satisfied but also emphasizes and elucidates the strategic and political dimensions intertwined within the legal framework. A thorough understanding and appreciation of these factors is equally important as the satisfying of the Borough Code's statutory requirements.

A second objective of this report, addressed in Part II, is the evaluation of contemporary demographic, social, and community planning trends and their prospective impacts on both future incorporation proposals and existing localities. Social and legislative trends have affected previous incorporation cases and an appreciation and understanding of contemporary trends will help to define opportunities for local governments in the Commonwealth. The five incorporation desirability factors enumerated in Chapter 2 (Section 202.1[d]) of the Borough Code serve as a useful platform for assessing the effectiveness of service delivery and operations of Boroughs and other localities operating throughout the state. These factors have been fashioned over time, through legislation and the courts, to help define the ideal composition and character of a borough. Evaluating contemporary social, demographic and commu-

nity planning trends through the lens of these five factors will help to determine the net effect on desirability of many of these popular movements.

To begin, Part I will briefly discuss the history of borough incorporations in Pennsylvania in order to help establish a larger context for the Commonwealth's incorporation process as well as introduce some of the societal trends that have impacted borough incorporation. Following the brief history, the express statutory requirements outlined in Chapter 2 of the Borough Code that govern incorporation will be considered and analyzed as well as the five incorporation desirability factors found in Section 202.1(d). After reviewing these factors, an analysis of notable, past incorporation cases will help to illustrate the applicability of these five factors and clarify strategic considerations that have affected incorporation desirability in the courts. Lastly, in Part II of this study, contemporary demographic trends; social trends; community planning trends; and the five desirability factors will be synthesized in order to evaluate opportunities for prospective petitioning groups as well as boroughs and other local government units presently operating in the Commonwealth.

## Acknowledgments

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### FRONT COVER PHOTOS:

*Top left: Foxburg Borough*

*Top right: Jim Thorpe Borough*

*Center left: Port Clinton Borough*

*Center right: Tidioute Borough*

*Bottom left: Confluence Borough*

*Bottom right: Danville Borough*

### BACK COVER PHOTOS:

*Top: South Renovo Borough*

*Bottom: West Homestead Borough*

# Part I

## 1.1 Borough Incorporation History

Boroughs are unique in that they represent the only form of local government in PA enabled by statute to incorporate through the division of and separation from an existing local government unit. No provisions for the creation of new counties, cities or townships via division and separation exist in the state's constitution or statutes (Pennsylvania Department of Community and Economic Development 2014 [PA DCED], 34-35). All other local government boundary changes—annexation, consolidation, and merger—require a voter initiative or joint municipal agreement.<sup>1</sup>

The earliest boroughs were incorporated by the Pennsylvania General Assembly through special legislative acts. In 1834, courts of quarter sessions—county courts—were given discretion to incorporate as a borough any settlement with a population of 300 or greater, this population threshold was rescinded in 1915 (PA DCED, 2014, p. 35). The 1834 provision required a petition for incorporation be filed at a county court by a majority of freeholders (landowners) residing within the area proposed for incorporation. This freeholder component of the 1834 statute has not changed and remains the primary step in incorporation procedure. An amendment to the Borough Code in 1941 allowed first-class townships with populations of 8,000 or greater to incorporate as boroughs. This provision was rescinded in a 1947 re-enactment of the Borough Code. Around this time courts were beginning to liberally incorporate sparsely populated areas into boroughs, leading to concern about the incorporation process and the viability of lightly populated, newly incorporated boroughs (DCED, 2014, 35). In 1981, Act 80 established new requirements that were added to the Borough Code to help prevent the incorporation of scantily populated areas with little capacity to function as a government and elect a council. The 1981 act required the appointment of a borough advisory committee by a county court to consider the overall desirability of an incorporation proposal before a petition could be granted. The 1981 amendment also required a referendum vote on incorporation petitions granted by the courts. Until Act 80 of 1981, county courts of common pleas had the final determination on incorporation; if a petition was granted by a county court, a new borough would be incorporated without a subsequent referendum.

An important distinction should be made between incorporation referenda and referenda for other types of boundary changes granted under Article IX of the PA Constitution (annexations, consolidations and mergers). In incorporation referenda, the question on incorporation is posed only to residents of the area proposed for incorporation. In other boundary change procedures requiring referenda, the ballot is open *all the electors of each municipality affected and passage requires a vote in favor of the change by a majority of voting electors in each of the separate municipalities*. In short, the referendum procedure for other boundary changes presents a much greater obstacle than the referendum requirement for borough incorporation.

<sup>1</sup> Due to an inability by the legislature to agree on uniform annexation and boundary change standards within two years following the enactment of the 1968 constitution, the courts ruled that annexation may only be conducted through voter initiative and referendum – a right guaranteed by Article IX of the PA Constitution. The 1994 Municipal Consolidation or Merger Act allows municipal mergers and consolidations to be initiated by intergovernmental agreements and confirmed by a subsequent majority vote of the electors of the separate entities involved. See Department of Community and Economic Development Boundary Change Procedures publication for more details.

Following the 1981 amendments to the incorporation process the most current substantive revisions to the borough incorporation procedure occurred in 1992 and 2012. In 1992, Act 181 amended the Borough Code by adding a 500-resident requirement for areas to be incorporated. This addition to the Code, similar to the advisory committee addition, was added to help curb usage of the incorporation provision in frivolous cases involving small groups of stakeholders with parochial objectives. In 2012 the Code was recodified by Act 43 in order to make it more harmonious with contemporary statutes and case law. This 2012 revision included the addition of two new desirability factors to be reviewed by the borough advisory committee in accordance with Borough Code section 202.1(b).

Table 1 below lists notable statutory changes to the borough incorporation process by date of enactment, date of rescission and a short description of the revision (The --- symbol indicates a provision or a provision's general language remains in effect).

**TABLE 1: Significant Changes to Borough Incorporation Procedures**

Date Enacted	Revision Description	Date Rescinded
1834	County Courts enabled to incorporate any settlement with a minimum of 300 residents (Act 98)	1915
1941	First Class Twps. with populations $\geq 8000$ allowed to incorporate (P.L. 881)	1947
1947	New language more loosely defining a settlement eligible for incorporation (Borough Code reenactment)	1966
1966	Any area within a court's jurisdiction eligible for incorporation, no reference to a settlement or village (Act 581 of 1965; 1966 Borough Code); the current provision reads " <i>any contiguous area</i> from one or more townships" may be incorporated	—
1981	Appointment of a <i>Borough Advisory Committee</i> required to consider incorporation desirability and voter <i>referendum</i> requirement (Act 80)	—
1992	Requires proposed borough to include a minimum of 500 residents (Act 181)	—
2012	Two new desirability factors codified for Advisory Committee assessment – a change from 3 to 5 factors (Act 43 - B.C. section 202.1[d])	—

(PA DCED, 2014, pp. 35-36; Pennsylvania Local Government Commission, 2012, p. 3)

## HISTORICAL INCORPORATION TRENDS IN PENNSYLVANIA

Borough incorporations via petition, in accordance with the Borough Code and general statute, occurred with much more frequency in the early 20<sup>th</sup> century than in recent history. Around two-thirds of existing boroughs were incorporated from 1850 to 1910 as a result of industrialization and urbanization (PA DCED, 2003, p. 2). In the 19<sup>th</sup> and early 20<sup>th</sup> century before the nation began to suburbanize at a high rate, a strict urban-rural dichotomy existed. As pockets of development became increasingly dense, greater levels of public service became necessary. Such services were supplied most efficiently by an urban form of government such as a borough or city (PA DCED, 2014, pp. 1, 34-35). Accordingly, throughout this time period, a natural progression from township to borough to city existed as areas became more populated and required additional public services; boroughs were frequently incorporated over these years. The number of incorporations significantly dropped off in the years following World War II. In this era, the automobile became the nation's predominant means of transportation with an effect of sprawling suburbanization and less dense development typical to a borough community. Table 2 below shows the number of borough incorporations from existing governmental entities broken into four time periods, covering 100 years.

**TABLE 2 - New Municipalities Formed from Portions of Existing Units**

	1920-1944	1945-1969	1970-1994	1995-2015	TOTAL
<b>Boroughs</b>	<b>42</b>	<b>16</b>	<b>13</b>	<b>0</b>	<b>71</b>
<b>Townships*</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>18</b>

*\* Townships could be created from portions of other, existing townships from 1803 to 1937  
Source: PA DCED, 2014*

As depicted in the table, the number of new borough incorporations stemming from existing units dropped-off significantly in the latter half of the 20<sup>th</sup> century. The table displays three 25-year periods—1920-1944, 1945-1969, and 1970-1994. The last column or time period in the Table covers only 21 years, 1995-2015. Forty-two boroughs incorporated over the 25-year period from 1920 to 1944. In contrast, from 1970 to 1994, only 13 boroughs incorporated from existing governmental units, roughly a 70 percent decline from the earliest period in the table. Furthermore, it has been 22 years since the last borough incorporation in the Commonwealth—Bear Creek Village in 1993. As previously mentioned, much of this decline may be attributed to the ubiquity of the automobile in the years following World War II and the subsequent disbursement of settlement to a suburbanized periphery. Additionally, the 1981 and 1992 Borough Code amendments have added extra requirements for groups petitioning to incorporate a new borough.

It's important to recognize that social and cultural trends are not static. Just as society trended toward suburbanization and automobile dependence over the latter half of the 20<sup>th</sup> century, new societal trends of development and settlement can be expected to continue to emerge and evolve into the future. Some of these new emerging societal trends and their prospective effects will be discussed in Part II of this analysis when considering opportunities for boroughs and other municipalities in the Commonwealth.

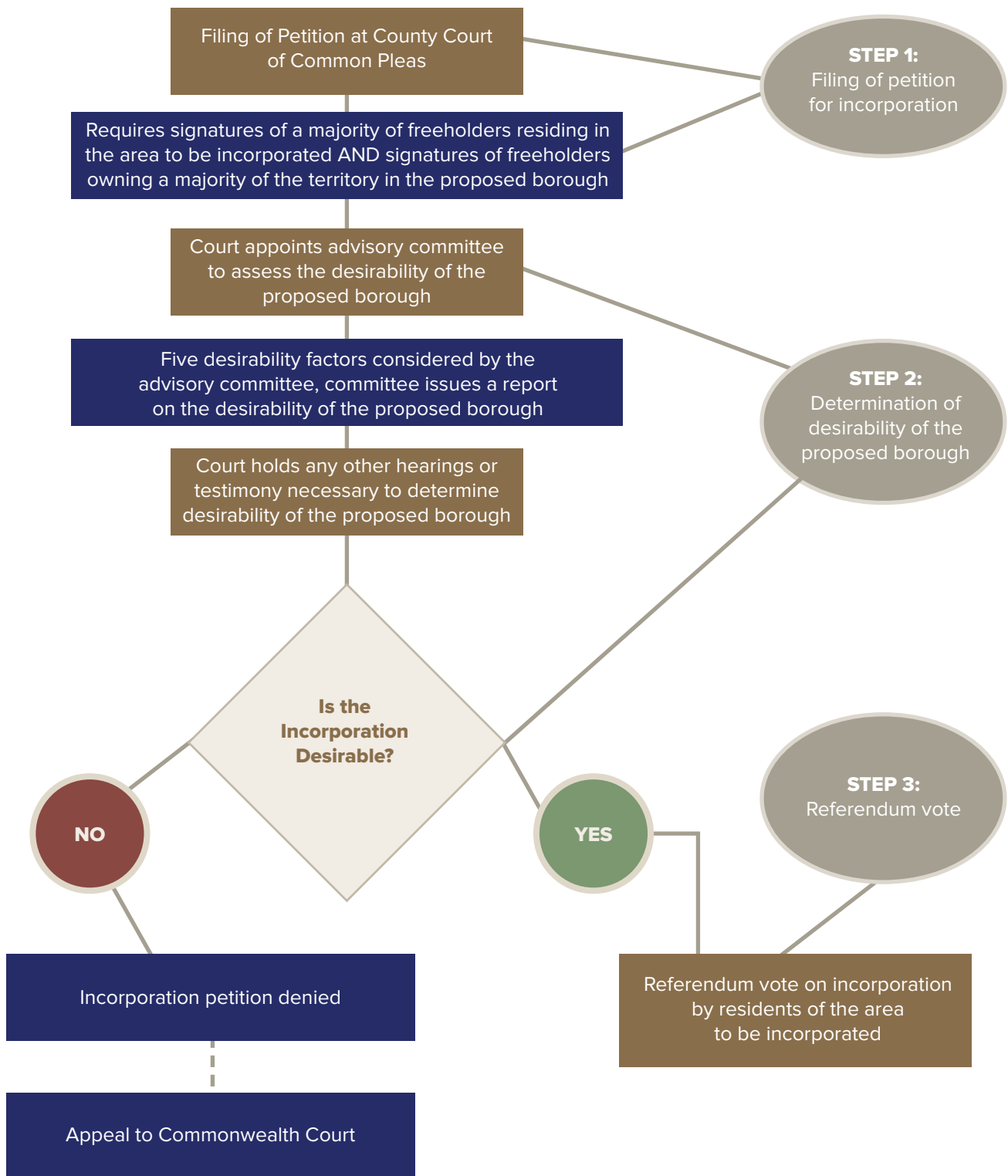


## 1.2 Borough Incorporation Process

Chapter 2, Subchapter A of the Borough Code governs the procedure for incorporation of new boroughs from portions of second-class townships in the Commonwealth. There are nearly 20 sections in Subchapter A that detail the incorporation process. This analysis will focus on the essentials of the process and major considerations for petitioning groups to understand before proposing to incorporate a new borough.

In overview, the process involves three critical parts: (1) the filing of a petition for incorporation at a county court of common pleas, (2) a decision by the court on the desirability of the proposed incorporation, and, (3) if the proposal is considered desirable in court, a referendum vote by residents of the proposed borough. This study will concentrate on the first two major components of the process outlined by the Borough Code: the filing of the petition and the ensuing court case considering incorporation desirability. First, statutory requirements or preconditions necessary to validate an incorporation petition will be addressed followed by a discussion on the borough advisory committee and the five desirability factors outlined in the Borough Code. After review of the statutory requirements and desirability factors, a breakdown of incorporation cases spanning the last 35 years will help to illustrate how the desirability of proposed boroughs have been determined in the recent past.

Figure 1 - The Incorporation Process



## FILING A PETITION FOR INCORPORATION: INCORPORATION PRECONDITIONS

The Borough Code establishes concrete requirements to be met for a borough incorporation petition to be valid in court; without meeting established statutory requirements in the Code, a group of stakeholders will not be able to organize a petitioning movement to incorporate a new borough. With this in mind, a brief discussion of these statutory requirements is appropriate. Major statutory preconditions, listed in Chapter 2 (Subchapter A) of the Borough Code, are briefly discussed below.

1. The area to be incorporated must be contiguous from one or more townships of the second class and include a minimum of 500 residents. As mentioned previously, this requirement was a revision to the Borough Code in 1992 (Section 201).
2. The petition is to be signed by a majority of freeholders—persons with a continuous right to ownership and possession of real property—residing in the area. Renters and tenants are not considered freeholders qualified to sign borough incorporation petitions. If the area to be incorporated involves multiple townships, a majority of resident freeholders from the area to be incorporated in each individual township is required (Section 202[a]).

This requirement involves the determination of a threshold number of freeholders residing in the area to be incorporated in order to meet a majority. This threshold number of freeholders is contingent upon the proposed boundaries determined by the group petitioning for incorporation. The boundary lines of a proposed borough can be the same as the existing township(s) (Section 202(f)(2)).

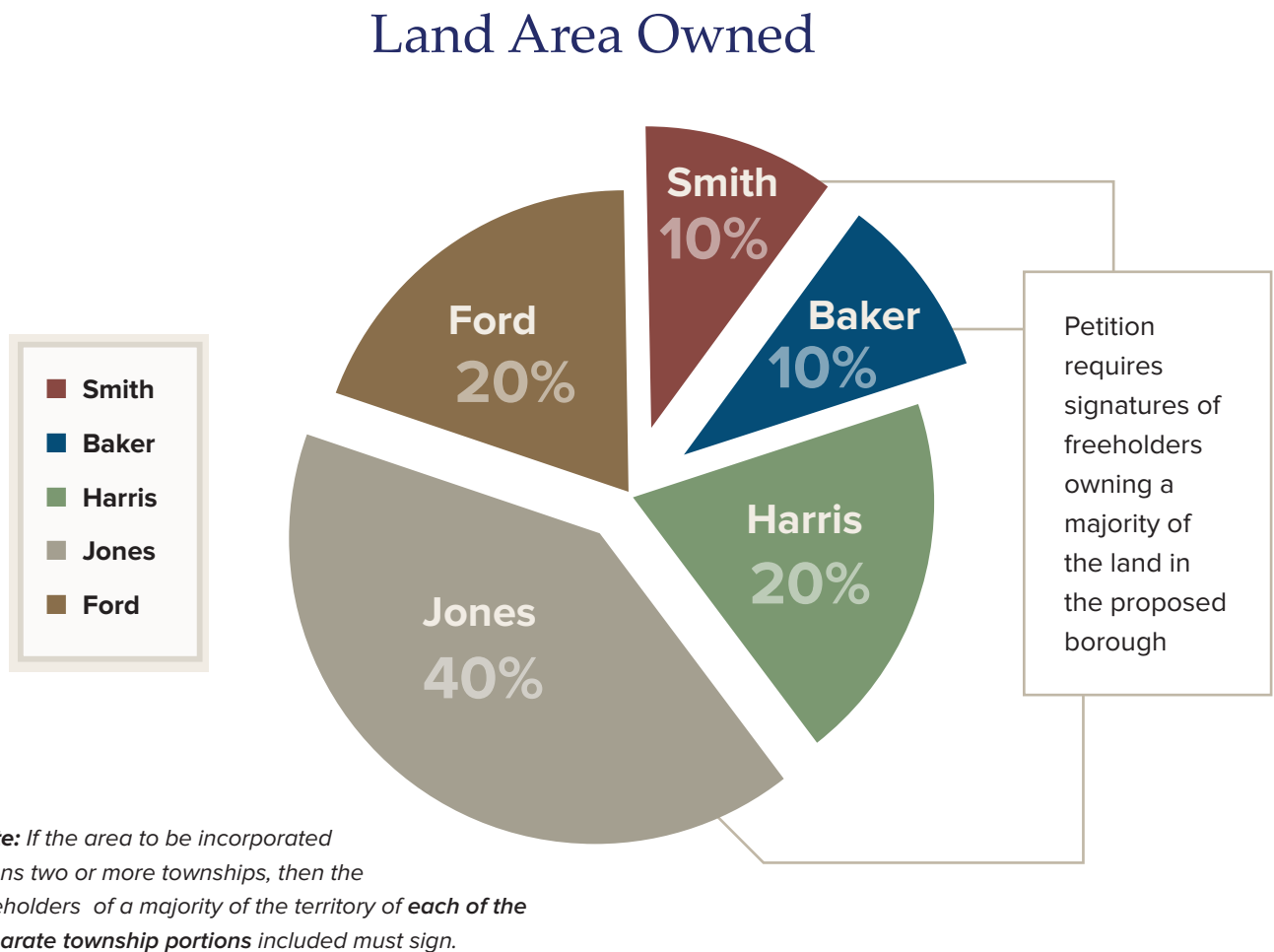
3. The petition must be signed by freeholders of a majority of the territory. For instance, if three freeholders collectively own 51 percent of the land area to be incorporated, the signatures of these three freeholders would satisfy the majority territory requirement. Additionally, if one freeholder owns 50 percent or more of the land to be incorporated, the signature of this freeholder would be required to validate the petition.

A simple example in Figure 2 below depicts a hypothetical scenario with five total freeholders: Smith, Baker, Harris, Jones and Ford. In the example freeholder Jones owns 0.40 square miles (sq. miles) of the 1 sq. mile area to be incorporated (40 percent). Freeholders Harris and Ford both own 0.20 sq. miles (20 percent) and freeholders Baker and Smith each owns 0.10 square miles (10 percent) of the area to be incorporated. In the hypothetical figure the signatures of freeholders Jones, Smith and Baker—as portrayed in the figure—or any another combination of these six freeholders adding to a majority of the area to be incorporated would satisfy the majority of territory requirement.

Petitioners are required to meet both the total majority of freeholders and majority of territory requirements. In the hypothetical scenario just discussed, and displayed in Figure 2 below, both of the aforementioned requirements would be met as freeholders Jones, Smith and Baker own a majority of the territory to be incorporated (60 percent of the total territory) and represent a majority of total freeholders residing in the area to be incorporated (three out of five total freeholders). Another example, using the

same figure, would satisfy one but not the other majority requirement. Hypothetically, in Figure 2, if freeholders Ford, Harris and Baker signed a petition to incorporate without freeholders Smith and Jones, the petition would not be valid. Although this scenario would involve a majority of total freeholders (three out of five), the signatures of freeholders owning a majority of the land would not be satisfied as Ford, Harris and Baker collectively own only 50 percent of the land to be incorporated.

**Figure 2 - Example: Majority Territory Freeholder Requirement**



Freeholder signatures necessary to validate the petition are to be gathered within three months immediately preceding the filing of the petition at a county court of common pleas. Although meeting all of the statutory requirements outlined in the Borough Code is necessary to validate a petition for incorporation under the Borough Code, satisfying the outlined statutory preconditions does not guarantee a right to incorporation. Incorporation petitions are granted only if found favorable before a court of common pleas after an advisory committee report and any other hearings or testimony necessary to determine a proposal's desirability.



## INCORPORATION DESIRABILITY: THE BOROUGH ADVISORY COMMITTEE

The establishment of a borough advisory committee has been a requirement since the 1981 amendment to the Borough Code. The Borough Code, Section 202.1, states the committee is to provide expert advice and findings of fact related to the desirability of a proposed incorporation. The advisory committee is required to have at least five members appointed by the court: two members residing in and representing each township involved, two members that are residents of the proposed borough and one member from the associated county that is neither a resident of the township(s) nor the proposed borough. The county member is to serve as the chair of the advisory committee. In a case involving just one township, the committee chairperson has a pivotal influence on the advisory committee's majority position. In many cases the committee members from the associated township and proposed borough involved in the case split votes, leaving the decisive vote on incorporation advisability to the committee chair. This committee structure is, therefore, acutely sensitive to a judge's committee chair appointment. Although broad discretion is given to the county courts to determine a proposed borough's desirability and a court is not required to adopt an advisory committee's findings, the committee's findings, in most cases, have a considerable effect on a court's final ruling and, in fact, some judges may in effect "rubber stamp" an advisory committee's findings. The Borough Code enumerates five desirability factors to be evaluated by an advisory committee in order to form a report endorsing or opposing incorporation; these factors are listed below.

### Section 202.1(b) – Incorporation Desirability Factors

1. The proposed borough's ability to obtain or provide adequate and reasonable community support services such as police protection, fire protection and other appropriate community facility services.
2. Whether the proposed borough constitutes a harmonious whole with common interests and needs that can be best served by a borough form of government. Is the proposed borough a distinct community different from the existing township(s)?
3. The existing and potential commercial, residential, and industrial development of the proposed borough.
4. Whether the proposed borough would provide for land use regulations to meet the legitimate needs for all categories of residents – are the proposed land use plans exclusionary promoting economic segregation?
5. The financial or tax effect on the proposed borough and existing township(s).

These five factors form the criteria the advisory committee is to use in assessing the desirability of a proposed incorporation. The Borough Code does not specifically address how the committee is to consider the criteria. For instance, there is no guidance as to whether a proposal is to fulfill all of the factors or if the proposal is required to fulfill a majority of the factors, neither does it provide a weight to each factor

to help the committee in determining the overall desirability of a proposal. Absent a guiding protocol, the advisory committee must apply the factors by the discretion of its members.

As previously mentioned, a court of common pleas hearing an incorporation case has great latitude of discretion in determining the overall desirability of an incorporation proposal. Satisfaction of explicit statutory requirements and the incorporation pre-conditions does not guarantee a right to incorporation. Ultimately, the decision as to whether the incorporation of a new borough is desirable is determined by a court of common pleas after hearing an advisory committee report and any other testimony or hearings necessary to support a final decision. The court does not have to rule in agreement with the report of an advisory committee<sup>2</sup>.

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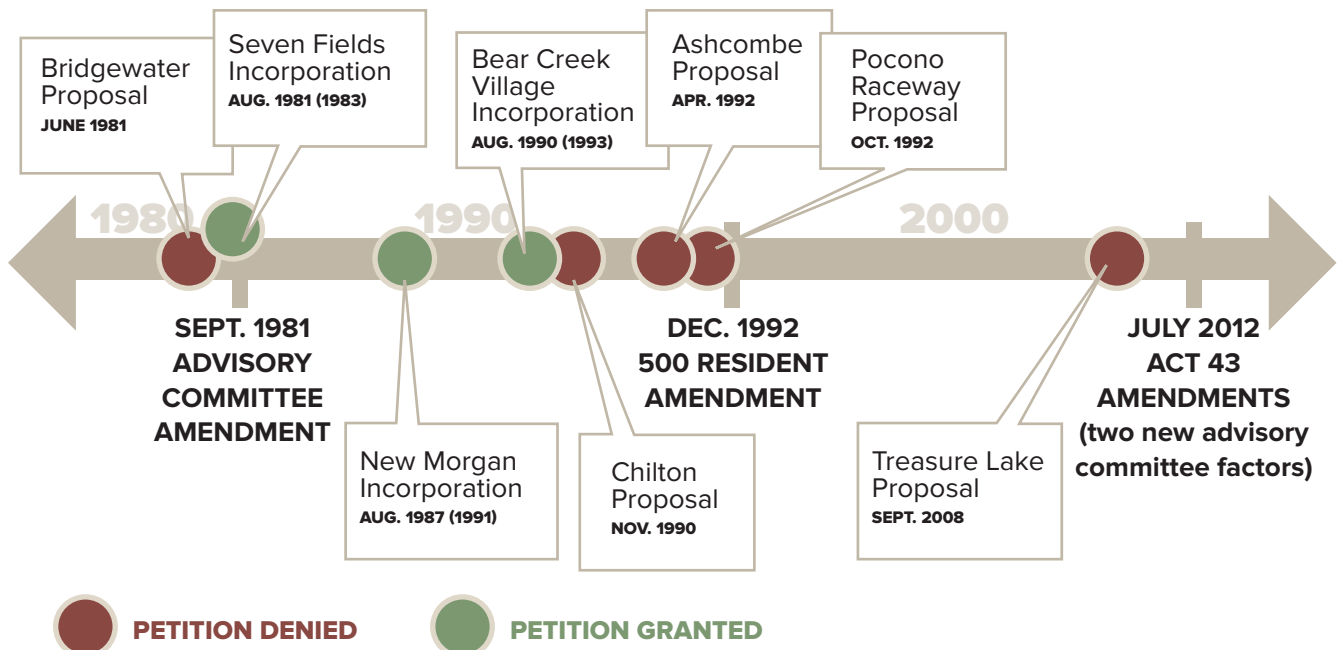
<sup>2</sup> A proposal to incorporate "Pocono Raceway" as a borough was denied by the Monroe County Court of Common Pleas in 1993 despite a report by the appointed advisory committee finding the proposed borough desirable. This incorporation case is discussed later in this report (p. 21).

## 1.3 Incorporation Cases

The following section will briefly review significant incorporation cases that have helped to provide more definition to the desirability factors listed in the Borough Code and the applicability of these factors in court. Review of these cases will help to provide a more thorough understanding of the strategic factors at play in an incorporation case—factors with implications on the fulfillment of the desirability factors used to judge a proposed borough’s desirability. It is important to note, however, that these cases cannot be directly applied to current or prospective incorporation endeavors. Although these past cases offer insights to certain court rulings in the past, the Borough Code offers county courts of common pleas broad discretion to determine the desirability of a prospective incorporation. This discretion allows a county court to approve or reject a proposal as they see fit as long as there is ***any reasonable basis for its decision ascertained in the court hearing/testimonies***. This discretionary provision afforded to county courts renders past cases as mere guides and tools for learning.

The incorporation filings’ timeline in Figure 3 will be useful for reference throughout the following review of precedent incorporation cases. The timeline lists the cases that will be reviewed in this section in chronological order according to the year when each petition was ***initially filed*** at a county court of common pleas. Although many of these cases were decided several years after the filing of the petitions, the *date of filing* generally determines the statutory procedures to be followed, with a few notable exceptions which will be discussed. The timeline also marks the most recent amendments to the Borough Code that have significantly impacted the incorporation process: the 1981 advisory committee requirement; the 1992, 500-resident provision; and Act 43 of 2012 recodification amendments.

**Figure 3 - Timeline of Recent Borough Petition Filings**



**Note:** A year in parentheses is the official year of incorporation for those petitions granted.

## INCORPORATION LAW APPLICABILITY

In general, incorporation procedure is guided by applicable law in effect when a petition is filed. An exception to this rule affected the petition to incorporate the borough of Ashcombe, filed April 6, 1992. The Ashcombe petition was dismissed by the Cumberland County Court of Common Pleas due to a provision in Act 181 of 1992—enacted on December 18, 1992—that made the 500-resident requirement applicable to petitions presented on or after March 25, 1992 in all counties except those of the fifth class. The Ashcombe petitioners appealed to the Commonwealth Court arguing that the provision violated their right to due process as well as laws of judicial procedure (Pa. C.S. § 1976(a)). The Commonwealth Court upheld the trial court’s decision to dismiss the case based on Act 181 and reasoned that the petitioners had no “vested right” to incorporate as the petition had not been approved by the trial court and the advisory committee hearing the case had voted 3-2 against incorporation (*In Re: incorporation of the Borough of Ashcombe*, 1994, p. 4). The Clearfield County Court of Common Pleas used the same reasoning in 2012 when Chapter 2 of the Borough Code was amended by Act 43 (See Table 1), holding that the Act’s amendments were applicable in the Treasure Lake proposal, since the case was pending at the time of the law’s enactment. This ruling has implications for future incorporation petitions in that a petition filed but pending a final determination may be subjected to new or special legislation enacted during judicial review that may affect the petition’s outcome.

The following subsections will provide a review of notable incorporation cases from over the past 35 years—the timeline in Figure 3 may serve as a helpful reference tool throughout these subsections.

## CHILTON PROPOSAL

In 1990, a petition was introduced to incorporate the borough of Chilton, proposing to create a new borough by separating from Monaghan Township in York County. The petition was signed by two petitioners, spouses, who were land developers and who represented the sole freehold interest in the proposed borough. The two developers planned to construct a housing development around a golf course on 492 acres (the area to be incorporated). The incorporation was, allegedly, a move to avoid restrictions imposed by the township’s zoning/development ordinances which had frustrated the petitioners’ development efforts (PA DCED, 2014, p. 43).

The prospective incorporation was deemed undesirable in a 3-2 vote of the advisory committee appointed by the York County Court of Common Pleas to review the proposal. Despite the advisory committee report against incorporation, the county court held that the petition could not be denied since all statutory requirements were satisfied by the petitioners. This decision was reversed in an appeal to the PA Commonwealth Court, which ruled the trial court neglected to utilize reasonable discretion as instructed by the Borough Code and incorrectly assumed it was constrained by statutory language (*In re: Incorporation of the Borough of Chilton*, 1994, p. 6). This case offers an excellent example of how statutory compliance cannot guarantee a right to incorporate and emphasizes the desirability factors involved in an



incorporation case as well as the discretion afforded to county courts. The trial court hearing the Chilton case was expected to utilize its vested discretion to determine the overall desirability of the proposed borough. Although all statutory requirements were met, in this specific case, the advisory committee report, hearings, and expert testimony seemed to provide clear evidence that the proposed incorporation was not desirable.

A key factor worth noting in the Chilton proposal is the impact of legislative activity and trends. As referenced earlier, the Borough Code was amended by Act 181 in December of 1992, requiring a minimum of 500 residents be included in any area proposed for incorporation. This revision may have been developing during the trial court hearings and had been adopted at the time of the 1993 appeal and final Commonwealth Court decision reversal in 1994.

The Commonwealth Court opinion regarding the Chilton proposal states, “Of particular concern to the Committee [advisory committee] and to this Court is the potential of a borough with few residents and no guarantee that the proposed plans will be carried out.” After citing the then new 500 resident amendment, the court’s opinion continues: “Although the minimum resident requirement is not directly applicable in the present case, this Court nevertheless believes it is important to note the legislative change. Act 181 represents evidence of a trend away from the incorporation of boroughs with few residents...” (*In re: Incorporation of the Borough of Chilton*, 1994, p 7). Both the advisory committee evaluating the case and the Commonwealth Court were keenly aware of the prevailing legislative trends and the social concern for scantily populated boroughs incorporating with little capacity to operate effectively<sup>3</sup>. The Chilton case makes clear the effect of prevailing legislative and social trends on the final ruling of the Commonwealth Court. The courts being amenable to widespread social and legislative trends will be a general theme in this review of notable precedent incorporation cases. An awareness of pressing societal trends and their potential influence on a court’s conclusion should be a strategic concern for any group petitioning for incorporation. Later in this article, current community planning, demographic and societal trends will be further explored to examine and contextualize opportunities for boroughs and other local governments in Pennsylvania, not limited to the scope of incorporation proposals.

## NEW MORGAN

The New Morgan incorporation case is unique in that it was the first proposal to be granted final approval following the 1981 Code amendment (Act 80) requiring the appointment of an advisory committee (incorporation petition was filed August of 1987—see Figure 3 timeline). This case offers a prime example of the application of many of the incorporation desirability factors outlined in Section 202 of the Borough Code. The case was appealed twice; the decision authorizing incorporation was affirmed by both the PA Commonwealth and Supreme Court. Several of the desirability factors were key influences to the trial court’s decision favoring incorporation in the case, including: (1) the proposed borough’s disposition as a harmonious whole, distinct from its abutting townships; (2) the existing and potential commercial, residential, and

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<sup>3</sup> Similarly, a case evaluating a 1981 petition to incorporate the proposed Borough of Bridgewater, ordered for the establishment of an advisory committee to review the proposal despite the fact the petition for incorporation was filed before the enactment of the 1981 amendment requiring advisory committee review (DCED, 2014, p. 40).

industrial development of the proposed borough, and (3) the proposed financial impact on the existing townships and proposed borough. These factors will be considered in the following paragraphs offering an overview of the case. Additionally, these factors will continue to resurface as integral components in the discussion on incorporation desirability.

In the New Morgan case a developer, Morgantown Properties, owning a 5.7 sq. mile tract of land in Berks County that spanned Caernarvon and Robeson townships, proposed to incorporate the tract as a borough—being the sole freeholder. The developer’s land housed 17 residents. (This was prior to the 1992 amendment requiring a 500 resident minimum.) A portion of the land was designated for condemnation by Berks County to serve as an incinerator. Aside from the incinerator, the developer had plans for an extensive development that included a Victorian-styled tourist resort; a hotel; two golf courses; a commercial center; a planned residential development; and an area designated for open space.

An advisory committee was appointed by the court to evaluate the prospective incorporation, using the desirability factors outlined in Section 202 of the Borough Code as criteria. After review, the committee issued a majority report in favor of the incorporation, voting 3-2. The trial court, Berks County Court of Common Pleas, subsequently decided in favor of the incorporation. After the Commonwealth Court upheld an appeal of the trial court’s decision, the PA Supreme Court in 1991 decisively addressed claims that the proposed borough was not a harmonious whole (Second desirability factor).

The Supreme Court affirmed that, after review of hearings and testimony from planners, developers, and others to be involved in the development project, the prospective borough’s plans to develop the land would distinctly separate it from its two neighboring townships. Additionally, the development plans would require unified land-use specifications. Without incorporation, coordination of the two existing townships’ land development ordinances would be required and was effectively stalling development.

Furthermore, the advisory committee hearing the case and both appellate courts concluded that the positive financial effects related to incorporating the proposed borough would outweigh any negative financial impacts to the two existing townships. The PA Supreme Court established that the present loss in taxes and fees to Caernarvon Township, related to the incorporation of New Morgan would be \$9,900; Robeson Township’s projected loss was estimated around \$1,300. (*In re: Incorporation of Borough of New Morgan, Appeal of Caernarvon Township et al.*, 1991, p. 6). In this case, the total loss to the associated townships was not considered to have outweighed the benefits of the proposed incorporation. Additionally, the court, in its opinion, pronounced that the economic benefits inherent to the incorporation and proposed development outweighed costs associated with the projected increase in traffic and maintenance to neighboring township roads.

The New Morgan case offers valuable lessons for prospective petitioner groups. Land developer, Morgantown Properties, was successful in the case largely due to detailed plans that built a strong case for incorporation. As referenced in the PA Supreme Court opinion, planners, architects, engineers and developers to be involved in the development of the proposed borough were all active in

the court hearings and testimony. This detailed upfront work in preparing plans for the project, evidenced an active engagement and preparedness for incorporation as a borough. These detailed plans helped to fulfill the third desirability factor related to existing and proposed residential, commercial, and industrial development. In addition, the existence of such detailed and elaborate development plans helped the courts to view the proposed borough as a harmonious whole. The proposed borough was projected to employ over 12,000 persons throughout development and have a permanent population of 9,000 residents after development (*In re: Incorporation of Borough of New Morgan, Appeal of Caernarvon Township et al., New Morgan*, 1991, p. 6). This projected population density and projected high tourist traffic post development would separate the proposed borough from its more rural neighboring townships, requiring different public service needs.

The last special consideration in the New Morgan case that helped the incorporation to be deemed desirable in court was the fact that the property to be incorporated spanned two townships with different land-development ordinances. Execution of the proposed development plans would have required the harmonization of the two townships' ordinances. This lack of uniformity posed a cumbersome obstacle prohibiting development of the tract of land owned by Morgantown Properties. The courts strongly considered this obstacle, stating the borough should be created, in part, to establish a unified governmental approach to the development. The PA Supreme Court also noted that incorporation of a proposed borough to avoid the existing zoning/land-development restrictions is not an illegitimate motive; commenting on the New Morgan case:

“In short the appellants have failed to demonstrate that Morgantown’s motivation was to avoid existing zoning and land use restrictions, but even if they had demonstrated this, neither the statute nor our caselaw prohibits such avoidance. In fact, the entire incorporation process is predicated on the applicant’s notion that the proposed borough’s regulations, whatever they are, are preferable to those of the existing governments from which the proposed borough is derived (*New Morgan*, 1991, p. 5).”

This special circumstance, otherwise requiring the synchronization of existing townships' zoning and land development regulations, helped to compel the trial court and both appellate courts reviewing the New Morgan case to view the proposed incorporation as desirable. It's important to note that the New Morgan incorporation proposal would no longer be valid today as the area proposed for incorporation would not have met the 500-resident minimum established by Act 181 of 1992 at the time of filing.

### TREASURE LAKE

The Treasure Lake case is most recent case reviewed in this analysis, decided in September 2013. In the Treasure Lake proposal, the Treasure Lake Property Owners Association (TL POA) looked to separate from Sandy Township, Clearfield County and form a new borough. One of the principal motives

for the incorporation petition was avoiding a “double taxation”<sup>4</sup> or inequitable service provision where property owners in Treasure Lake paid full real estate taxes to Sandy Township and significant dues to the TL POA. The petitioners’ claim was that residents of Treasure Lake receive disproportionately less service for their tax dollars as many of their services (i.e., street repair/maintenance, garbage disposal) are provided by the TL POA. Ultimately the petition to incorporate was not considered desirable by the Clearfield County Court and was unsuccessful. The Treasure Lake proposal touches on nearly all the Borough Code’s desirability factors. These five factors and their application in the Treasure Lake case will be reviewed in the following subsections. Lessons may also be learned from juxtaposing the Treasure Lake case with details from the New Morgan and the Bear Creek Village cases. Although some key aspects of these cases are divergent (i.e. the population and characteristics of the area to be incorporated), other aspects are more appropriate for comparison.

Treasure Lake is a property owners’ association within Sandy Township, Clearfield County, zoned as a planned residential development. The development surrounds three lakes with a land area of 12.6 sq. miles. Treasure Lake had 3,861 residents in 2008 at the time the incorporation petition was filed, clearing the 500-resident minimum (*In re: Incorporation of the Borough of Treasure Lake*, 2008, p. 3). The bounds of the proposed borough were to be coterminous with the planned residential development district which the TL POA maintained. In 2008, at the time of the petition’s filing, 3,000 of the 8,044 acres in Treasure Lake were undeveloped, but only 1,300 of these undeveloped acres were suitable for development. Community planning/design and the rigid structure of the TL POA proved to be two of the key stumbling blocks for the Treasure Lake petitioners leading to an unfavorable advisory committee report and ultimately denial of the petition by the Clearfield County Court.



Welcome sign at Treasure Lake



Pavilion and dock on one of three lakes at Treasure Lake

<sup>4</sup> Attorney Alan Young, community association legal specialist, shed light on the impetus for community association incorporation in a December 2014 interview reviewing the Treasure Lake case for this analysis. Young explained that many community associations deal with financial hardships as upkeep and service costs outweigh difficult to collect assessments and dues. A common issue is the refusal by local governments to accept dedication of new roads servicing new community developments (a topic that should be explored further). In these situations, developers are left little option but to form a community association, many times without the appropriate capacity to adequately administer and service a community. This was indeed a problem at Treasure Lake, as the residents were reluctant to pay dues (50 percent dues-collection rate), feeling that a “double tax” was being imposed upon them (*In re: Incorporation of the Borough of Treasure Lake*, 2008, p. 8).



## Planning

The Clearfield County Court's opinion cites how TL POA land restrictions and covenants excluded a variety of land uses: Treasure Lake hosts no industrial development and no substantial commercial development (*In re: Incorporation of the Borough of Treasure Lake*, 2008, p. 27). In addition, the scope of the residential development in Treasure Lake is very limited, including only single-family detached dwellings and townhouse units developed exclusively for single family use. These restrictions imposed by the TL POA land covenants were one of the reasons the county court viewed concurrent TL POA and borough operations negatively and in conflict with the third and fourth desirability factors in the Borough Code. The land covenants, which were intended to remain in effect after incorporation, limited the potential scope of development. These land-use and development restrictions could have, upon incorporation, made the borough exclusionary by disallowing multifamily residential units as well as other housing options more suitable for low-income residents.



*Treasure Lake land covenants allow only for single family residential housing units (predominantly single family detached)*

A notable difference between the previously discussed New Morgan case and Treasure Lake case was the approach to incorporation and the planning work on the part of the respective petitioning groups. The Treasure Lake incorporation petition, in contrast to the New Morgan proposal, seemed to be less detailed in its planning agenda for the proposed borough. The Clearfield County Court of Common Pleas remarked that the proposed borough made no provision for open space and offered no internal commercial/industrial development that could lead to employment options for residents of the proposed borough. In contrast, New Morgan's robust and diverse development plan and community building strategy, with testimony from engineering and planning consultants, helped the proposal to succeed in court. This difference highlights the importance of pre-court organization and preparation related to community plans for a proposed borough. Detailed and well thought out community plans are at the center of many of the desirability factors outlined in the Borough Code.

As with financial and budgetary projections, an advisory committee reviewing scant or piecemeal development plans is less likely to consider the proposed borough desirable. For example, the Clearfield County Court asserted in its opinion that Treasure Lake did not constitute a harmonious whole—the

second desirability factor—largely due to the fact that it lacked a detailed plan to offer a diverse mix of land uses typical of a self-contained municipal community (*In re: Incorporation of the Borough of Treasure Lake*, 2008, p. 26). A good community plan will positively impact a local government’s ability to provide community support services and offer a diverse assortment of land uses that cater to the needs and wellbeing of every category of resident without exclusion. Many of the trending best practices in community planning/development will be reviewed in Part II of this report due to their salience in incorporation desirability and the continual improvement of local government service delivery.

## Financial Impact

Another distinction between the Treasure Lake and New Morgan cases relates to the proposed financial impact on the existing township(s) involved in these cases and the degree of detail in the respective petitioners’ budgetary proposals. In the Treasure Lake case, the Clearfield County Court found the budgetary proposals submitted for operation of the proposed borough piecemeal and inadequate, lacking detail on prospective costs and revenues (*In re: Incorporation of the Borough of Treasure Lake*, 2008, pp. 10, 30). In addition, financial testimony presented by the PA Economy League indicated that incorporation could push Sandy Township into fiscal distress with a loss of around 40 percent in total yearly revenues (*In re: Incorporation of the Borough of Treasure Lake*, 2008, p. 12). This aspect of the Treasure Lake proposal stands in contrast to both the New Morgan and Bear Creek Village cases. In these cases the financial effect on the existing townships were projected to be nominal<sup>5</sup> and petitioners produced more detailed, comprehensive financial analyses and projections, which were found to be compelling by the judiciary throughout the review process.

Attorney Alan Young, partner of Young & Haros, LLC—specializing in community association law—emphasized the importance of developing a strong financial case for incorporation during an interview at the firm’s offices in Stroudsburg, PA. Young was part of Treasure Lake’s legal counsel during the incorporation case and was emphatic on the importance of a sound financial analysis prepared by a reputable financial expert or firm. Young suggested that such financial and budgetary analyses are to serve as the backbone of any incorporation proposal and should help drive the argument for incorporation. Based on a review of numerous incorporation cases, Young’s suggestion appears to have merit. Cursory budgets and eleventh-hour financial projections are among the most common setbacks noted in past incorporation cases.<sup>6</sup> If a petitioning group is serious about incorporation, detailed financial projections and prospective budgets, prepared by credentialed financial experts, are essential.

<sup>5</sup> Total combined projected tax loss for both townships in the New Morgan case was just over \$11,000. Total loss of assessed property value for Bear Creek Township in the Bear Creek Village case was 17 percent.

<sup>6</sup> The Englewood Borough incorporation proposal (Schuylkill County), was considered undesirable in-part due to cursory and unrealistic budgetary proposals and financial projections (DCED, 2014, p. 42).

### Economic Segregation

Another significant hold-up in the Treasure Lake case was the potential economic segregation associated with the proposed incorporation. The advisory committee hearing the Treasure Lake case determined the mean household income for Treasure Lake property owners was \$78,800, while the mean income for Sandy Township residents was \$58,700 (*In re: Incorporation of the Borough of Treasure Lake*, 2008, p. 29). The fourth desirability factor in Section 202.1 (b) of the Borough Code considers whether a proposed borough would increase stratification of an area economically.<sup>7</sup> This desirability factor is directly linked to the housing make-up of a community; therefore, like many of the other factors, it is closely related to detailed community planning efforts. Provision for inclusive zoning and diverse land uses that welcomes different socio-economic classes is a major planning consideration. In the case of Treasure Lake, the limited variation of existing and potential land use imposed by restrictive land-use covenants was considered exclusionary by the Clearfield County Court of Common Pleas.

### Community Support Services

The Clearfield County Court concluded that incorporation of Treasure Lake would result in a degradation of overall community support services—the first desirability factor enumerated in the borough code—to both the new borough and the existing township. The projected loss in tax base would necessitate a 50 percent reduction in the township’s police force. Additionally, the court did not find the budgetary proposals by the petitioners for the creation of its own Treasure Lake police department convincing or adequate. In the court’s view, the inefficiencies of splitting into two separate departments would cut drastically into any cost savings and tax reductions sought by the petitioners.

Being the most recent incorporation case, Treasure Lake serves as a good example of the complexity inherent in the incorporation process following the 1992 amendment requiring a 500-resident quota. Incorporating an area with a considerable pre-existing population requires a greater consensus-building effort. In addition, projections and analyses require more detail as the impacts of the incorporation are likely to be more extensive to the existing township and prospective borough. The merits and reasoning behind the incorporation should be in close alignment with the desirability criteria outlined in the Borough Code and unequivocal to all parties involved.

## BEAR CREEK VILLAGE

Filed 18 years prior to the Treasure Lake petition (before the 500-resident quota), the Bear Creek Village incorporation petition resulted in a different outcome despite similarities between the two cases. The Borough of Bear Creek Village separated from Bear Creek Township in 1993, making it the most recent

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<sup>7</sup> The petition to incorporate the Borough of Bridgewater from Chester Township in Delaware County was denied on the basis of racial and economic segregation by the Delaware County Court of Common Pleas. The trial court decision was appealed to the Commonwealth Court where the County Court’s decision was upheld in 1985. The Commonwealth Court verified many of the trial court’s concerns with the proposed incorporation, including the likely effect of racial and economic segregation (*In Re: Incorporation of the Borough of Bridgewater*, 1985).

borough incorporation in the Commonwealth. The incorporation case was tried in the Luzerne County Court of Common Pleas after a petition to incorporate the borough was filed in August 1990. The Commonwealth Court heard an appeal and upheld the trial court's decision to grant the incorporation in September of 1992.



*Bear Creek Village Welcome Sign*



*View of Bear Creek Lake from one of the Borough's gravel roads*

### Treasure Lake and Bear Creek Village: Similarities

Several similarities exist between the Bear Creek Village and Treasure Lake incorporation cases. To start, both cases involved property owners' associations in the area to be incorporated with association members representing a majority of the petitioners. The Luzerne County Court of Common Pleas was much less detailed<sup>8</sup> in its opinion on the Bear Creek Village Association's involvement in the administration and fulfillment of the filing of the petition. Comparatively, in the Treasure Lake case, the Clearfield County Court opinion makes it clear that the Treasure Lake property owners' association initiated and administered the petitioning effort. Interestingly, the two trial courts differed greatly in their respective positions on the desirability of a borough operating concurrently with a property owners' association.

In contrast to the Treasure Lake case, the Luzerne County Court viewed the existence of a property owners' association as a fact supporting the desirability of the proposed borough and thereby strengthening the argument for granting the incorporation petition. The following excerpt from the Luzerne County Court's September 1991 opinion evidences the court's, and, by proxy, the advisory committee's, favorable outlook on the community association's involvement:

"With respect to the issue as to whether or not the proposed borough represents a harmonious whole, there can be no question that the proposed borough is, in fact, presently operating as a 'defacto' harmonious whole...It is clear that Bear Creek Village is in essence a community within a community. It has developed over the years as a private community

<sup>8</sup> The Luzerne County Court held no hearings or expert testimony through the case proceedings, but relied solely on the advisory committee's report when evaluating the desirability of Bear Creek Village.



which is completely self-supporting. Bear Creek Township contributes little to the community other than paying the millage to the fire department for the providing of services. All necessary expenditures are provided by the residents themselves through voluntary membership and fund raising with the Bear Creek Village Association.” (*In Re: Incorporation of the Borough of Bear Creek Village*<sup>10</sup>, 1991, p. 6)

As previously mentioned, the Clearfield County Court, in reviewing the Treasure Lake case, saw the TL POA as an impediment in many ways, and the court did not see its existence as a fact supporting the harmonious whole desirability factor as did the Luzerne County Court. The Luzerne County Court also references, in its favorable opinion, Bear Creek Village’s geographic features—settled around Bear Creek Lake—as a fact supporting incorporation of the borough as a harmonious whole. The Treasure Lake planned residential development is similarly situated around three lakes. This unique geographic factor was not enough in the Treasure Lake case to support the petitioners’ claims that Treasure Lake represented a distinctive harmonious whole.

The Luzerne County Court hearing the Bear Creek Village case also made reference to the tax/service provision equity issue pronounced by the Treasure Lake petitioners, stating in its opinion:

“The Residents of the proposed borough [Bear Creek Village] all share the same problems in that their tax dollars are not being utilized by Bear Creek Township to fund or provide any of the maintenance and support required.” (*In Re: Incorporation of the Borough of Bear Creek Village*, 1991, p. 7)

Here again, the courts had very different outlooks on a similar issue. The Clearfield County Court did not consider the claimed disproportionate service provision a real issue of equity and certainly didn’t consider it a fact supporting the harmonious whole desirability factor.

Yet another similarity between the Treasure Lake and Bear Creek Village cases is the land-use makeup of the proposed boroughs: both Bear Creek Village and Treasure Lake are almost exclusively residential. This issue was problematic for the Treasure Lake petitioners. The Clearfield County Court ruled that the lack of existing and potential commercial and industrial development was undesirable and militated against incorporation of Treasure Lake (*In Re: Incorporation of the Borough of Treasure Lake*, 2008, pp. 9, 10). Despite similar land-use make-up, the Luzerne County Court did not take issue with the lack of land-use diversity in the Borough of Bear Creek Village. In fact, the court hardly addressed the residential nature of the borough in its opinion granting the incorporation petition despite the desirability factor directing for evaluation of the existing and potential land-use mix in the proposed borough.

Additionally, when considering economic segregation and the fourth desirability factor, (this factor had not yet been codified as part of the Borough Code in 1990) a significant difference exists between the income levels of the borough and the township from which it separated. The most recent (2013) American Community Survey estimates show the median household income for the Borough of Bear Creek Village at \$102,851 compared to \$68,189 in Bear Creek Township. This income variance was not strongly considered as an impediment to incorporation in Luzerne County court review. Similar disparity in income

existed between Treasure Lake households and the households of Sandy Township and the disparity was deemed as detrimental to the proposal for incorporation.

### Treasure Lake and Bear Creek Village: Differences

Notwithstanding the aforementioned similarities between the cases, there were also notable differences that separated the two proposals. The Bear Creek Village proposal more easily satisfied the first desirability factor since the township from which it separated did not staff a police department. Upon incorporation the borough would rely on state police service just as it did before incorporation. This in contrast to the Treasure Lake proposal where the proposed incorporation would have resulted in a reduction to the existing township's police force, with only cursory plans as to if and how a newly formed police department would operate in the proposed borough.

Another notable difference between these two proposals relates to the streets. Bear Creek Village, upon incorporation dedicated its roads to the newly formed borough and allowed free, unrestricted public access to the newly formed community. The Treasure Lake Advisory Committee, in its majority report, noted that this free uninhibited public access was not guaranteed upon incorporation. The report also noted that such limitations to public access would be “inimicable to a free and open society” and, consequently, undesirable (Treasure Lake advisory committee report, p. 22).

As previously mentioned, the Borough Code provides advisory committees no explicit protocol for assessing the desirability factors enumerated in the Borough Code. Accordingly, there is potential for considerable variance in the methodologies committees use to form a report on a proposed incorporation's desirability. Bear Creek Village, for instance, includes no substantial commercial or industrial development; however, the advisory committee reviewing the proposal evidently didn't give this criterion much weight in its review. In 1990, the existing and potential residential, commercial and industrial development was one of just three desirability factors explicitly listed in the Borough Code (the other factors were from case law and were codified in 2012). Nevertheless, the Luzerne County Court of Common Pleas, in its favorable opinion, made no mention of the land-use factor or its impact on the desirability of the proposal. The Luzerne County Court's relaxed review stands in stark contrast to Clearfield County Court of Common Pleas and its review of the Treasure Lake proposal, with some notably similar facts. These discrepancies in trial court review underscore the ambiguity inherent in the incorporation process and the full array of variables that may play into a determination on incorporation desirability.

### POCONO RACEWAY

A petition to incorporate Pocono Raceway as a borough was submitted on Oct. 5, 1992 (see Figure 3 timeline). The amendments in Act 181 of 1992—the act establishing the 500-resident minimum requirement—were legislated to apply to cases filed on or after March 25, 1992, but provided for an exemption for those petitions filed in counties of the fifth class. The amendments became effective for counties of

the fifth class on Dec. 18, 1992 – the day the law was enacted. The Pocono Raceway petition was filed in Monroe County, a fifth-class county, in October of 1992 and was therefore exempt from the 500-resident minimum dictated by Act 181. If it was not for the special exemption in Act 181 the Pocono Raceway petition, like the Ashcombe petition (filed in April of 1992), would have been dismissed due to an insufficient number of residents in the area proposed for incorporation.

With the incorporation case preserved, the advisory committee evaluating the Pocono Raceway proposal would vote 3-2 in favor of incorporation, writing in its report that the prospective incorporation met all the statutory qualifications and represented a harmonious whole (*In re: Incorporation of Borough of Pocono Raceway, Pocono International Raceway*, 1994). The Monroe County Court, despite the advisory committee report, denied the petition for incorporation. The court was not as convinced as the advisory committee it appointed that the proposed borough would be desirable. Specifically, the court was concerned with the lack of residents present in the area to be incorporated. As previously mentioned, courts have proven to be amenable to trends and prospective statutes, even if the case in question is not necessarily subject to the statute. This bending to legislative trends is allowable when the decision is based solely on the court's discretion, as is the case with incorporation decisions.

Accordingly, the Monroe County Court denied the Pocono Raceway incorporation proposal, even after adopting nearly all of the findings of fact issued in the advisory committee's favorable report. This decision to deny the incorporation was upheld by the Commonwealth Court on appeal. The Commonwealth Court did not find an abuse of discretion in the trial court decision notwithstanding its incongruence with the advisory committee's report supporting the petition to incorporate. The Court affirmed the trial court's concern with an incorporation of such a small borough, the type of incorporation disallowed by legislation in years to follow (*In re: Incorporation of Borough of Pocono Raceway, Pocono International Raceway*, 1994, p. 4). This case reinforces themes developed in review of other precedent incorporation cases; specifically the broad discretion allowed in county court review and the potential impact of legislative and social trends.

The Pocono Raceway case shares some procedural similarities with the Chilton Incorporation case. In both cases the trial courts (courts of common pleas) ruled opposite of the advisory committee majority report on the desirability of the proposed incorporation. In Chilton, the trial court's disregard of the advisory committee report led to a reversal of its decision in favor of incorporation upon appeal, effectively denying the new incorporation. In contrast, the Commonwealth Court upheld the decision of the Monroe County Court in denying the incorporation of Pocono Raceway despite an undisputed advisory committee report in favor of incorporation. The differences between these cases lay in the fact that the York County Court hearing the Chilton case erred by misapplication of law in failing to exercise discretion as directed by Chapter 2 of the Borough Code. Although similar procedurally, the Commonwealth Court ruled the Monroe County Court of Common Pleas had a reasonable basis for denying the Pocono Raceway petition despite an undisputed advisory committee report finding the proposed incorporation desirable.

## SEVEN FIELDS

The Seven Fields incorporation case, filed 11 years prior to Pocono Raceway, reinforces the ambiguous and, at times, ambivalent history of incorporation cases throughout the Commonwealth. The Seven Fields case is unique in that, while it demonstrates the equivocal nature of incorporation case decisions, it simultaneously reinforces many of the case themes connected to incorporation desirability. In other words, the Seven Fields case is divergent from many of the other cases in terms of the overall case procedure, but yet, further supports many of the previously discussed themes related to successful and unsuccessful proposals for incorporation. Here again, the ambiguity of outcomes in these court cases should be noted. A process predicated on county court discretion without explicit assessment protocols is unlikely to maintain complete uniformity of outcomes and be easily predictable.

The petition to incorporate the Borough of Seven Fields from Cranberry Township in Butler County was signed on Aug. 31, 1981. The petition was filed just before the advisory committee requirement (Act 80) became effective in September 1981 (see Figure 3 timeline). Like New Morgan, the Seven Fields case involved a land development corporation, Canterbury Village Inc., planning to develop a privately-owned tract of land. The president of Canterbury Village signed the petition for incorporation along with 11 others, constituting a majority of freeholders in the proposed borough. Similar to the New Morgan case, the developer's detailed community development plans and expert testimony helped strengthen the argument for incorporation. During court hearings the Canterbury Village president described the developer's plans of erecting 2,400 residential units with 50 townhouses already constructed. The prospective borough was to attract a projected total of 9,000 residents. Additionally, the developer's plans were supported by upfront capital and infrastructure. Prior to filing the petition an adequate road system, public water utility infrastructure and public sewer system (including a treatment plant) had been constructed to support development. In addition, prospective contracts for police and fire services had been arranged for the proposed borough (*In re: Incorporation of Borough of Seven Fields, Canterbury Village Inc.*, 1983, p. 3). Such detailed preparation and compelling testimony on future development plans, supported by industry or planning professionals (engineers, planners, developers), along with capital investment prior to the petition helped to strengthen both New Morgan and Seven Field's arguments for incorporation. Ultimately, these arguments for incorporation were seen favorably by the courts.

Also like New Morgan and in contrast to Treasure Lake, an agreeable, detailed financial report was provided by the PA Economy League, which supported the cause for incorporation. The PA Economy League was employed by Cranberry Township to examine the financial effects of the proposed incorporation and, therefore, the financial analysis was unlikely to be biased in favor of the petitioners. Ultimately, the PA Economy League report found that the incorporation would have a marginal financial impact on the township and that the township could adapt to the loss of the area proposed for incorporation without difficulty (*In re: Incorporation of Borough of Seven Fields, Canterbury Village Inc.*, 1983, p. 4). This financial finding was integral in the final decision in favor of the incorporation of Seven Fields.

Broad county court discretion in determination of incorporation desirability has been a recurring theme in the preceding court cases. Typically, in previous cases (i.e. - Pocono Raceway, New Morgan, et al.), county courts have been granted wide discretion to grant or deny an incorporation. Any reasonable

basis used by county courts for justifying a decision on incorporation has been affirmed by higher courts on appeal. In most of these cases, where appeals have been accepted by the Commonwealth and PA Supreme Courts, the appellate courts limited their scope of review to procedural errors or misinterpretation of law by the trial court (Chilton). The Commonwealth and Supreme Courts have generally endorsed county court discretionary rulings on incorporation desirability and, in doing so, have emphasized and formalized the discretion afforded to trial courts by the Borough Code to decide on incorporation desirability. The Commonwealth Court opinion on the Bear Creek Village incorporation case outlines this appeals procedure well:

“Initially, we note that our standard of review is to affirm the trial court’s findings unless they are not based on competent evidence, or unless the court’s conclusions of law are not reasonably based upon its findings of fact. (*In re: Incorporation of the Borough of Bear Creek Village, Appeal of Bear Creek Twp.*, 1992, p. 6).”

In the Seven Fields case, the Butler County Court of Common Pleas had its decision to deny the petition for incorporation of the Borough of Seven Fields reversed on appeal due to an abuse of discretion. That is to say, the Commonwealth Court decided the Butler County Court of Common Pleas had **little to no reasonable factual basis** for deeming the proposed incorporation undesirable. Again, this case is a notable exception to the general rule of affirming trial court findings upon appeal.

It’s clear Seven Fields made a strong case for the desirability of the incorporation in order to have the county court’s ruling reversed on appeal, consequently deeming the incorporation desirable and resulting in the boroughs creation in 1983. The model for success employed by Seven Fields’ petitioners is similar to the model New Morgan would utilize when filing its proposal for incorporation just four years following Seven Fields’ 1983 incorporation. In essence both of these boroughs argued convincingly that their host townships were in some fashion inhibiting the development of an otherwise inevitably successful community. According to this model, the area designated for incorporation is argued to become, upon execution of proposed community development plans, a community not adequately served by the existing township and a community with a distinct and separate character and interests.

Additionally, both Seven Fields and New Morgan made a compelling case that the proposed new borough community would add major economic and social value to the surrounding region. This type of argument was made successful through proactive planning and upfront investment in the proposed community. The plans and budgets of these prospective boroughs were not merely speculative, but detailed and promising plans—plans that were ultimately found convincing to the courts that would review them.

## NEW INCORPORATION PROGNOSIS

For prospective groups of stakeholders desiring to incorporate under the Borough Code, projecting this model forward is not as simple. The 500-resident amendment to the Borough Code prevents incorporations by petitioning groups or developers merely providing plans for a prospective borough community.

Now the existing area is required to host 500 residents prior to incorporation, in addition to formulating a compelling argument that the prospective incorporation is desirable. The pre-existing population may complicate planning in that petitioners don't have a blank slate to work from but rather must work with (or perhaps around) existing development to engineer a singular cohesive community. Furthermore, areas designated for incorporation already containing 500 residents are likely to have a greater financial impact on an existing township if incorporated as boroughs, resulting from a greater reduction in the existing township's tax base. To date, no proposed incorporation of an area including 500 or more residents has succeeded in court following the 1992 Borough Code amendment.

Treasure Lake serves as a prime example of an incorporation proposal occurring after 1992 without a compelling and strong plan for a new community after incorporation. The formulation of such a community plan was complicated due to the fact 3,500 residents resided in the area proposed for incorporation when the petition was filed. At the time the petition was filed, only 2.03 sq. miles (16 percent of Treasure Lake's land area) were available and suitable for new development, limiting the petitioners' capacity for new and diverse development (*In re: Incorporation of the Borough of Treasure Lake*, 2008, p.6). In addition, the lack of diversity in the land use in the preexisting development and resistance to expanding development variety and character weakened the petitioners' case for incorporation.

The TL POA didn't succeed in selling the incorporation as an overall win for the region at large. As previously mentioned and emphasized by the Clearfield Court of Common Pleas opinion on the case, the Treasure Lake proposal was lacking on both the financial and proposed community planning fronts. Although the petitioners satisfied the explicit statutory requirements outlined in Section 201 and 202 of the Borough Code, the argument for desirability was not as thorough and compelling as it needed to be to ensure desirability before the court. A lack of plans to develop the remaining developable land upon incorporation and reluctance to amend restrictive land covenants and the semi-private structure the TL POA weakened its argument substantially. In addition to guaranteeing unrestricted public access, the court may have given the incorporation application more consideration had the Treasure Lake petitioners integrated trending planning and community development approaches into their proposal, practices potentially including, but not limited to:

- plans to develop the remaining developable area with higher density mixed used development,
- a borough-wide promotion of multimodal transportation;
- a prospective "complete streets" policy (biker and pedestrian friendly road design);
- a "fair share" housing policy ensuring an appropriate portion of affordable housing for low-income residents;
- an attractive park or open space to serve the entire region; or
- a proposed collaborative economic development or transit partnership with its neighboring jurisdictions (City of Dubois and Sandy Township).



Moreover, more in-depth, preliminary involvement with planners<sup>9</sup> and engineers would have helped evidence a commitment to the plans for the prospective development.

Although such trending initiatives may not match the interests of all stakeholders in a petitioning group, it's important to recognize the potential positive impact of their adoption and bring such consideration to the table before committing to a lengthy and costly adjudication process. In addition, it would be ideal to educate stakeholders on best practices in local community planning and create a shared vision before attempting to move forward with a formal incorporation venture and, if successful, assuming all the inherent responsibilities of becoming a borough in the Commonwealth.

Though the 1992 requirement is a substantial hurdle, steepening an already uphill track for petitioning groups, it doesn't completely change the aforementioned incorporation model utilized by Seven Fields and New Morgan. New proposals will now have to meet the 500-resident threshold while simultaneously including strong cohesive plans for a prospective borough community. These plans are likely to be made in partnership with developers and industry professionals and include both reuse and new development in areas proposed for incorporation. Like the Seven Fields and New Morgan approaches, new plans to incorporate should be detailed leaving very little, if anything, to speculation. Additionally, prospective Incorporation plans should look to integrate best practices and trends in community planning, and, if possible, be supported by upfront investment, demonstrating a commitment to executing proposed plans.

Another lesson from Treasure Lake considers the ability to provide community services in a newly created borough. Moving forward, petitions for incorporation in areas with regionalized public services or areas relying on state service (i.e., regional police, fire, state police service) are likely to present stronger arguments in court. Regionalization allows a petition to more easily satisfy the first desirability factor—ability to provide community support services—since a new borough could be included in a pre-existing regional service area at a small incremental cost to the regional service provider. In contrast, areas with fragmented local government service provision may require petitions to include the creation of a new service department, creating inefficiency, increased costs, and increased fragmentation of public services for the area.

## NEW DEVELOPMENT INCORPORATIONS

When considering the outlook of future borough incorporations in the Commonwealth, the positive relationship between new development proposals and granted petitions provides additional insight. In contrast to pre-existing communities, New Morgan and Seven Fields' petitions involved detailed plans for developing new densely developed communities with attractive amenities for both its prospective residents, businesses and the surrounding region. These detailed community development proposals were compelling and full of potential for regional economic growth. Additionally, it was established the existing township(s) involved were impeding such development, making the argument for the proposed

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<sup>9</sup> Section 202.1 of the Borough Code mentions borough advisory committee members "may consult with the director of the county planning commission" who may advise the committee on its decision. A group of stakeholders serious about borough incorporation should consider consultation with planning professionals - including the county planning director - and the adoption of best planning practices.

incorporation stronger. New development incorporations such as New Morgan and Seven Fields are now nearly precluded with the 500-resident minimum threshold. Notwithstanding the population threshold, the foundational premise behind these new development incorporations is likely to remain a centerpiece for successful future borough incorporation endeavors. Moving forward, on a larger scale, viable incorporation proposals will likely need to prove that host townships are, in some manner, obstructing natural community development in a distinct, unique area proposed for incorporation, and in doing so, demonstrate that these host municipalities are deterring the area and region's economic growth. The means of making such a case is still likely to be through strong and detailed community development plans modifying or expanding on a defined area selected for incorporation. Ideally, these plans should be supported by some capital, and show clearly the benefits (e.g., economic, social, and environmental, etc.) of the incorporation outweigh the drawbacks (e.g., financial effect on existing townships, reorganization, etc.). Such plans are likely to require a great deal of local consensus building, more so than before the 500-resident threshold was established and, therefore, will require a well thought-out proposal that makes clear the unequivocal benefits of the proposed incorporation.

Additionally, as previously mentioned, expert involvement and adoption of best practices and trends in planning and community development are likely to be integral components of an incorporation proposal for favorable consideration in court.

With this incorporation prognosis in mind, Part II of this report will outline and review current societal trends and best practices in community planning. Many of these broad trends lend themselves to the proliferation of more dense, compact and sustainable development—development typical of a borough—and therefore should be of great interest to prospective petitioner groups. Reviewing these trends will serve a two-fold purpose: (1) to further assist in strategic guidance for any group of stakeholders desiring to incorporate, and (2) to help existing local governments identify opportunities for continual improvement in operations and service delivery. An understanding of and adaption to these trends, including the integration of emerging best practices, is likely to be key for successful incorporation petitions in the future. In addition, adjustment to these emerging trends and practices by existing local governments is vital for existing localities desiring to build sustainable communities moving forward in the 21<sup>st</sup> century.

## Part II

### 2.1 Trends & Research: Demographics and Community Planning

As evidenced in discussion and review of the incorporation process and precedent cases, an understanding of and adaption to planning, societal, and community development trends is integral to building a strong case for a proposed incorporation. All else being equal, If overall desirability before a court is the litmus test for whether or not an incorporation petition is granted, it then behooves petitioners to understand prevailing societal trends and to adopt a proposal that integrates emerging best community development and design practices most likely to build stakeholder consensus and be considered desirable in court. In addition to their importance in building a case for incorporation, an appreciation of contemporary trends is also critical to sound local government planning and decision making for administrators and elected officials of existing localities. An understanding of societal trends can help decision makers capitalize on new opportunities, enhance service delivery and attract new residents and businesses by catering to their interests and demands. The following section outlines several key, interrelated social, demographic and community planning trends that have vast implications for local governments and local service delivery. Many of these contemporary trends appear reciprocal in nature and reinforce each other.

#### URBANIZATION

The first bedrock trend that demands attention is the 21<sup>st</sup> century urbanization movement and its associated effects on communities. As of 2010, an estimated 80 percent of the U.S. population live within an urban area. 2010 census data show a 12.1 percent increase in the U.S. urbanized population over the first decade of the 21<sup>st</sup> century. Census data indicate a continued shift to a more urbanized society nationwide, trending toward a reversal of the urban sprawl prevalent throughout the latter half of the 20<sup>th</sup> century. These national trends are consistent with a global urbanization movement. A recent study by the London School of Economics and Political Science (LSE) reports that, for the first time in human history, a majority of the world's population now resides in urban areas. The recent LSE report projects worldwide urbanization to continue into the 21<sup>st</sup> century, forecasting 66 percent of the world population will be urban by 2030 (Floater, et al., 2015, pp. 1, 4).

This population shift towards urban areas has had a noticeable impact on formerly sprawling suburban communities and businesses. Professor Ellen Dunham-Jones of the Georgia Institute of Technology, in a presentation on suburban retrofitting, provided some examples of the effects the urbanization movement has had on suburban communities. In her presentation Dunham-Jones explained how suburban commercial properties nationwide, many of which were constructed in the 1960s and 1970s, are aging without grace. With more and more movement towards urban centers,

rehabilitation and reinvestment in many of these properties does not make economic sense. Below are several facts Dunham-Jones presented in a 2015 webinar demonstrating the impact of urbanization on suburban commercial properties:

- One-third of the nation's estimated 1,100 shopping malls are dead or dying
- There is an 11 percent vacancy rate nationally for strip malls
- Within the 350,000 big box stores, 300 million square feet are vacant
- 16-24 percent suburban office vacancy rate nationwide (Borys, 2015; Dunham-Jones, 2015)

These alarming statistics, in part, tell a story of renewed movement to more sustainable urban areas. Such urban areas typically attract younger populations (millennials), have higher population density, are less dependent on the automobile, are more pedestrian friendly, and offer a broader array of public amenities that are more convenient to residents.

## Urban Areas in Pennsylvania

The Census Bureau identifies two types of urban areas: (1) the urbanized area and (2) the urban cluster. The 2010 census designated 27 **urbanized areas** within Pennsylvania—areas containing greater than 50,000 residents. In addition, the state registered 110 **urban clusters**—areas with a minimum of 2,500 and no greater than 50,000 residents—to arrive at a total of 137 recognized urban areas in the Commonwealth (Census Bureau, 2012). Please note, these census designated areas are not coterminous with and do cross PA political subdivisions. The Census Bureau's urban-area criteria also considers an area's population density, with varying population density thresholds used to identify urban areas. (Census Bureau; Federal Register, 2011, pp. 53030, 53035, 53039).

The Commonwealth's 27 *urbanized* areas contain a population of 9.9 million residents, or around 71 percent of the state's total population. Five of the Commonwealth's 27 urbanized areas identified in the 2010 census were represented by boroughs and are listed in Table 3.

**TABLE 3 - Urbanized Areas**

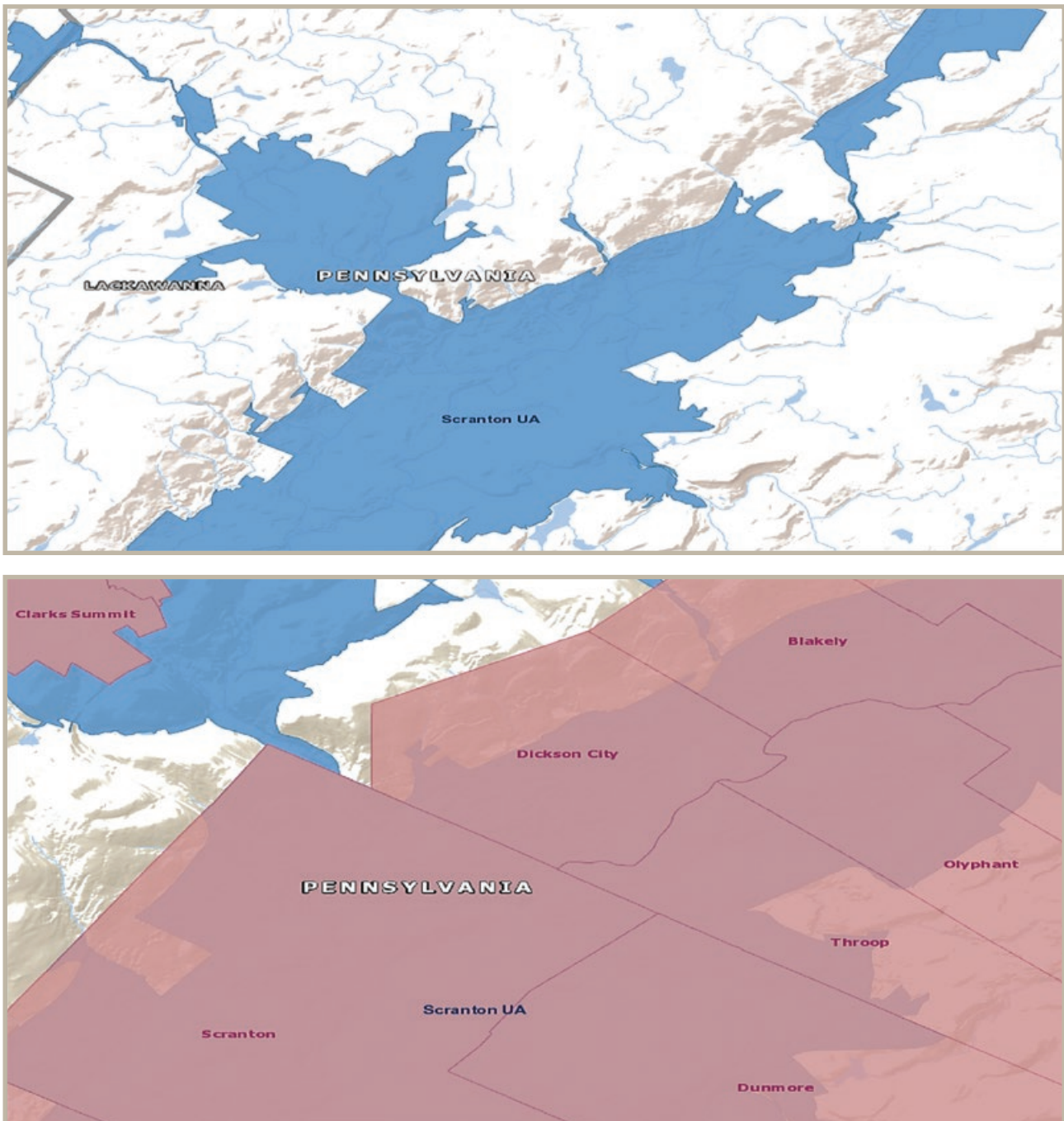
Urbanized Areas Represented by Boroughs
Chambersburg, East Stroudsburg, Hanover, Pottstown, State College

*Areas with greater than 50,000 residents that meet Census Bureau population density thresholds  
Source: 2010 Census Bureau Data*

Additionally, a considerable number of the Commonwealth's boroughs are included within urbanized areas represented by cities. For instance, the Scranton Urbanized Area (Scranton UA) is depicted in Figure 4 using the TIGERweb GIS tool developed by the Census Bureau. Scranton is classified as a

second-class(A) city by the Commonwealth; however, the Scranton UA transcends the city's political boundaries. The first map caption in Figure 4 displays the Scranton urbanized area in blue (Scranton UA in the figure). The second map displays the Scranton UA overlaid with incorporated places (boroughs and cities) in red. Notice that many boroughs, or portions of boroughs, are contained within the overall Scranton UA, including: Clarks Summit, Dickson City, Blakely, Dunmore, Throop, Olyphant and others not included in the figure.

**Figure 4 - Other Boroughs in Urbanized Areas**



Boroughs included in urbanized areas represented by cities or other boroughs, such as those in the Scranton UA, further indicate how boroughs are an integral part of the urban DNA of the Commonwealth.

Aside from urbanized areas, Pennsylvania's urban clusters house approximately 1.01 million residents, or around 8 percent of the state's total population. Eighty of the State's 110 urban clusters identified in the 2010 Census were represented by boroughs or combinations of boroughs (See Table 4).

**TABLE 4 - Urban Clusters**

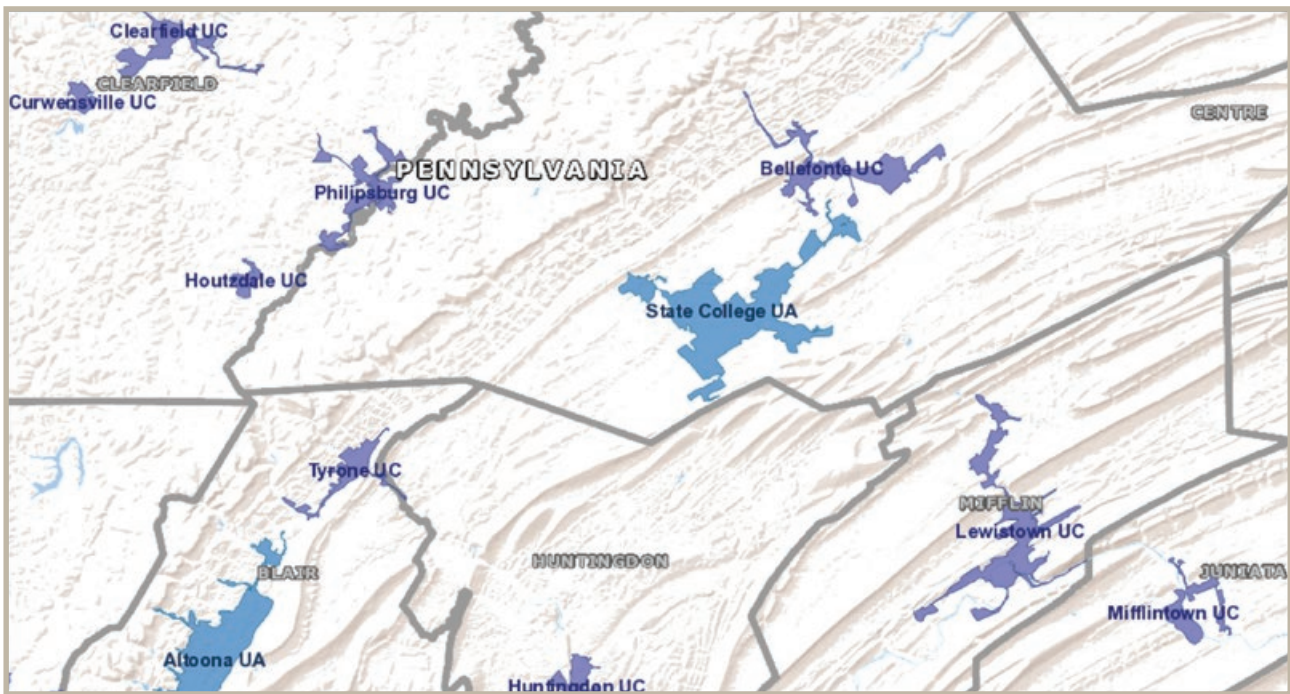
Urban Clusters Represented by Boroughs
<p>Albion, Ashland, Bedford, Bellefonte, Blairsville, Bonneauville, Brockway, Brookville, Burgettstown, Clarion, Clearfield, Cresson, Curwensville, East Prospect, Edinboro, Ellwood City, Elverson, Emporium, Everett, Greenville, Grove City, Honesdale, Houtzdale, Huntingdon, Indiana, Jersey Shore, Jim Thorpe, Kane, Kittanning, Kutztown, Lewistown, Ligonier, Littlestown, Lykens, Mansfield, Martinsburg, Masontown, Mercer, Meyersdale, Mifflinburg, Mifflintown, Millersburg, Milton-Lewisburg, Montgomery, Moscow, Mount Holly Springs, Mount Pocono-Emerald Lakes, Mount Union, Muncy, Nanty-Glo, New Freedom—Shrewsbury, Newport, New Wilmington, North East, Northern Cambria, Orwigsburg, Patton, Philipsburg, Pine Grove, Punxsutawney, Quarryville, Reynoldsville, Ridgway, Roaring Spring, Mount Carmel, Shenandoah-Mahanoy City-Frackville, Shippensburg, Slippery Rock, Somerset, Stewartstown, Susquehanna Depot, Tamaqua, Towanda, Tunkhannock, Tyrone, Union City, Waynesboro, Waynesburg, Williamstown, Youngsville.</p>

Source: 2010 Census Bureau Data

Urban clusters are represented in purple in Figure 5 below with the UC designation. Nearly 75 percent of the Commonwealth's urban clusters are represented by Boroughs.



Figure 5 - TIGERweb Map: Urban Clusters

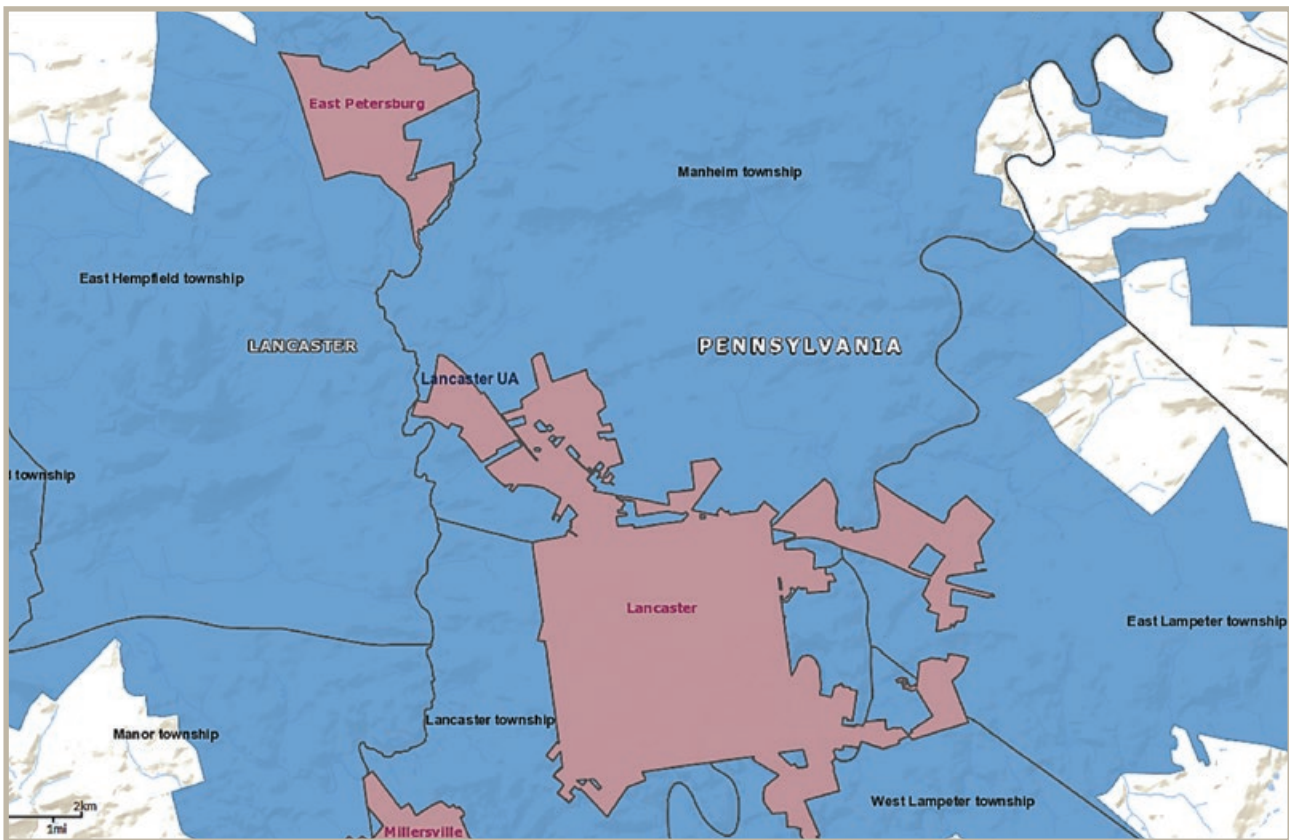


In total, 85 of 137, or 62 percent, of Pennsylvania's urban areas, both UAs and UCs, identified in the 2010 census are represented by boroughs. This statistic demonstrates that boroughs are a key part of the Commonwealth's urban identity. In total, combining both urbanized areas and urban clusters, as defined by the Census Bureau, an estimated 79 percent of PA's population resides in urban areas.

Holistically, looking at PA's population breakdown by municipality, it's clear that many of the urban clusters and urbanized areas include significant portions of townships, given the fact that a recent PA State Data Center publication reports that a projected 56 percent of the state's population resides in townships throughout the Commonwealth (PA State Data Center, 2015). Interestingly, townships, which are traditionally the least urban form of local government in Pennsylvania, appear to not only house a majority of the Commonwealth's population, but also have witnessed the most population growth over the past five-years. There are various explanations for this fact that appears to buck the national urbanization trend. The first is that townships, or portions of townships, are becoming more "urban" in character. A recent survey by economist Jed Kolko shows that census data may group what most would consider suburban development into an urban-area category (Kolko, 2015).

Figure 6 displays this finding visually by illustrating the census-designated Lancaster urbanized area (Lancaster UA). A large majority of the Lancaster UA is composed of townships—Manheim, East Hempfield, Lancaster, West Lampeter, East Lampeter—with Lancaster City at its core along with the boroughs of East Petersburg and Millersville. These more densely populated suburban areas surrounding the city and boroughs are included in the urbanized area and, in part, tell the story of 20<sup>th</sup> century urban sprawl.

Figure 6 - Municipal Distribution of the Lancaster UA



Another factor contributing to minimal growth in PA's traditional urban municipalities is the stringent state annexation laws that make the expansion of cities and boroughs extremely difficult. According to a 2015 PA State Data Center report only nine of the Commonwealth's 56 cities have had population increases since 2010 and boroughs across the Commonwealth also have lost population since 2010 (PA State Data Center, 2015). A lack of population growth in PA's traditional urban municipalities (cities and boroughs) may offer a partial explanation for Pennsylvania's stagnant population growth (0.7 percent) compared to the U.S. average (3.3 percent) since 2010 – the ninth slowest growth rate among states over the last four years (Census Bureau, 2014).

Regardless, the recent national urbanization trend is vital for localities to consider. Boroughs represent an urban form of municipal government and should therefore explore ways to cater to this national trend and welcome any prospective inflow of residents. Both groups of stakeholders with legitimate desires to incorporate an area as a borough and existing municipalities should be considering optimal ways to design, or adapt and redesign their communities in response to this urbanization movement.

## GENERATIONAL TRENDS

A societal shift complementing and reinforcing urban population growth is the arrival of a new generation to the workforce. The millennials (or generation Y)—the generational cohort representing ages 18 through 34 as of 2015—are now fully integrating into the workforce and show some divergent preferences compared to baby-boomers and generation X workers. A 2015 Pew Research Center article explains how, in 2015, millennials are to become the most populous generational cohort in the U.S., overtaking the baby boomers (See Figure 7) (Fry, 2015).

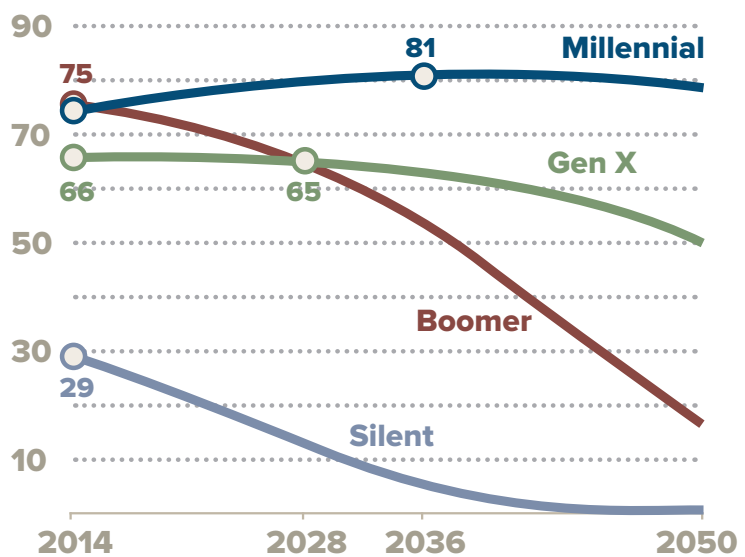
### Housing Market Impacts

In recognition of this demographic shift, a 2014 PricewaterhouseCoopers (PwC) and Urban Land Institute (ULI) study on projected real-estate trends showcases the interest that many in the real-estate investment community have in predicting the housing preferences of millennials. Many studies have documented a millennial partiality for urban settings, a point stressed in the PwC study. To date, millennials have displayed a penchant for urban settings, more so than the suburban preference of their parents. A question remains to be answered though: Is this millennial surge toward urban settings an issue of lifestyle preference or economic feasibility in wake of the Great Recession? The ULI and PwC report cites two different perspectives from real-estate investment managers. One respondent stated, “It is likely that at least a portion of this [Millennial] generation will opt to move out of the city when the family starts to grow and access to extended family and schools becomes important.” The second investment manager respondent had a slightly different outlook, stating, “They [millennials] are so used to access to amenities and dislike the idea of commuting so much that they are just as likely to adjust their lifestyle to smaller living spaces as they are to move.” (PricewaterhouseCoopers [PwC] and the Urban Land Institute [ULI], 2014, p. 35)

Although it would be imprudent to paint the millennials with too broad of a brush, it’s a reasonable assumption, given the documented urban propensity and other social trends associated with the millennials, that the generation’s urban preference will continue to reinforce the national urbanization shift into

**Figure 7 - Generational Cohorts 2014 - 2050: Population Change by Generation**

*in millions*

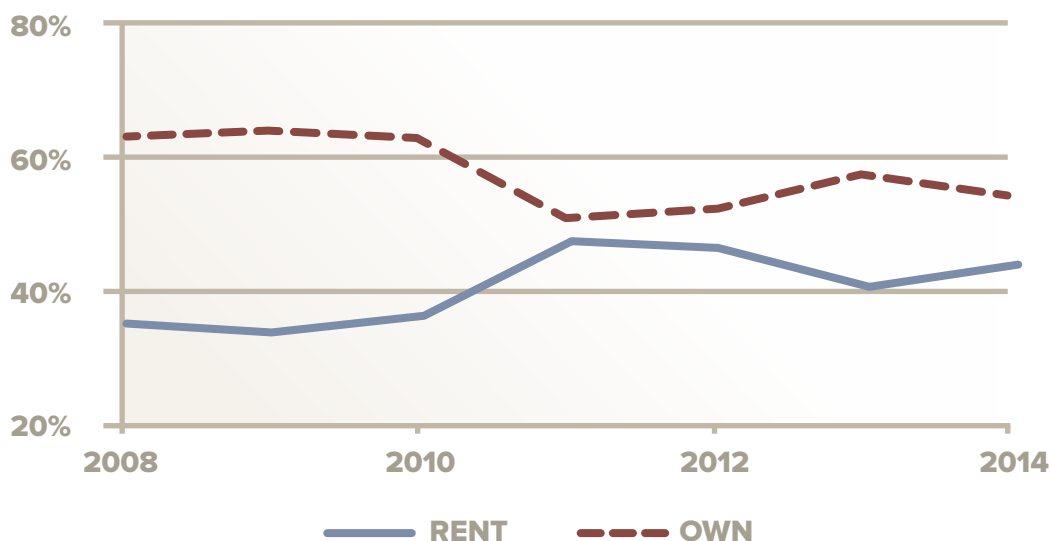


Source: Fry, 2015 [Pew Research Center]

the foreseeable future. Accordingly, the PwC report lists “infill and urban housing” highest on its list of real-estate investment and development prospects. In support of the PwC real-estate trends analysis, a Washington, D.C. based transportation alliance, Transportation for America, recently released poll results that found four out of five millennials residing in urban areas prefer a living arrangement that isn’t automobile dependent for daily commutes and trips (Transportation for America, 2014)<sup>10</sup>. This surge towards more urban-oriented communities, supported by the millennials, has big implications on local governance throughout the nation, including Pennsylvania.

A March 2015 release from the Pennsylvania Independent Fiscal Office (IFO) also supports the PwC study on real-estate trends. The economic report includes a section summarizing a millennial—defined in the report as Pennsylvanians aged 20-30—propensity for renting rather than owning homes. The PA IFO analysis reports a sharp increase in millennial renters, starting in 2011 with higher levels sustained thereafter (See Figure 8).

**Figure 8 - Pennsylvanians Aged 20-30, Share of Owners v. Renters**



Source: Pennsylvania Independent Fiscal Office, 2015

This sharp increase in renting is not unique to Pennsylvania. The Joint Center for Housing Studies (JCHS) of Harvard University recently released its *State of the Nation's Housing* report in 2015 which found a national renting boom among US households. Figure 9 is an excerpt from the JCHS report and illustrates how the first half of this decade has been unprecedented in terms of renter household growth, with an average annual renter household increase of 900,000 through the first five years. The JCHS projects in its analysis that millennials will form over 20 million new households between 2015 and 2025 and that a majority these new households will be rentals. (Joint Center for Housing Studies of Harvard University, 2015, p. 29).

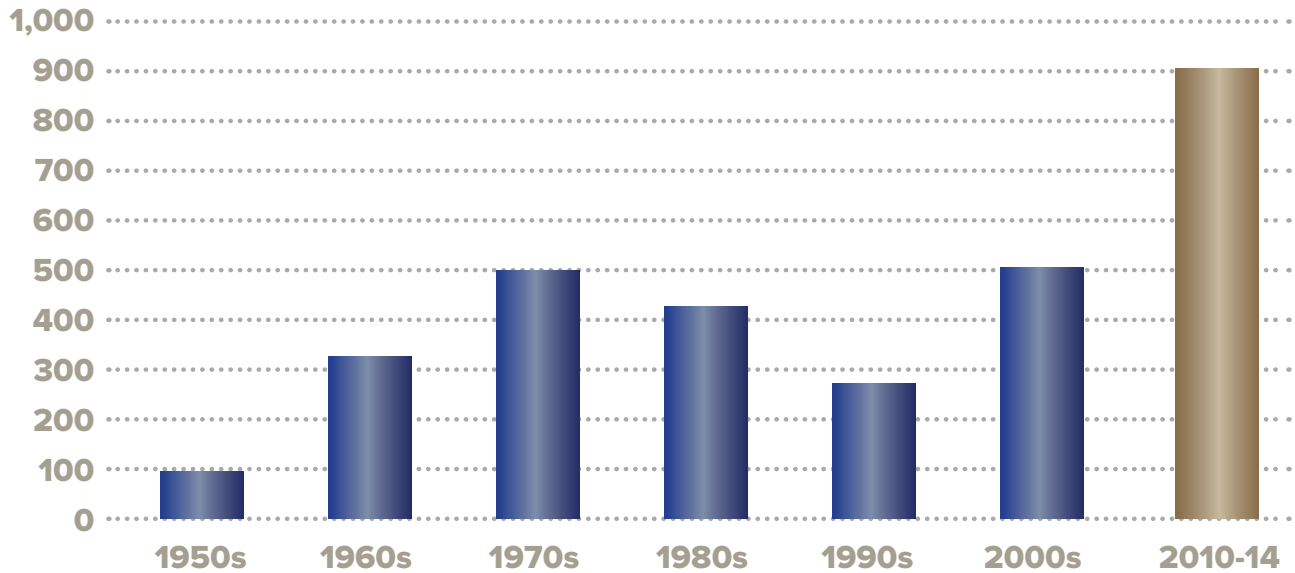
<sup>10</sup> Research from Georgia Institute of Technology Professor Ellen Dunham-Jones finds that two-thirds of suburban households no longer have kids. This research corroborates with other studies documenting the millennial urban preference upon entering the workforce. In addition, this reality has implications on the viability of suburban sprawl development patterns moving forward (Dunham-Jones, 2010).



**Figure 9 - Average Annual Increase in Renter Households by Decade**

## So Far in the 2010s, Annual Renter Household Growth Has Outstripped the Pace in Any Previous Decade

*Average Annual Change in Renter Households (Thousands)*



Source: Joint Center for Housing Studies of Harvard University, 2015, p. 26

This increase in demand for rental properties has resulted in inflated housing costs for renters. Ideally, the real-estate market adjusts, creating a larger supply of compact or multi-family housing units and in turn the cost escalation for rental properties declines. Unfortunately, the economics may not be that simple due to local land-use regulations that, in some cases, may prohibit such increases in multi-family and other more compact housing development conducive to renting and urban infill. This issue will be discussed in greater detail later in the community planning trends section of this report.

The previously referenced PwC/ULI report, exploring developing real estate trends in 2015, surveyed and interviewed industry experts, investors, fund managers, developers, property companies and consultants across a large sample of U.S. cities and metro areas. The study included over 1,400 responses, offering a good cross-section of the current and projected real-estate landscape. The PwC report emphasizes the wide-spread urbanization shift and concentration on urban areas in the real-estate market. As the 2010 census data indicate, the nation is shifting demographically toward urban hubs and the real-estate market is evolving accordingly. The integration of millennials into the workforce and housing market has intensified this trend. The PwC and ULI report also refers to the emerging trend of younger, pre-retirement baby boomers (ages 55-64) moving to smaller dwellings—residences requiring less maintenance responsibility than larger suburban dwellings—and renting in urban areas closer to work, with increased access to urban amenities (PwC and ULI, 2014, p. 36). Given this surge to urban areas, it's no

surprise that areas with growing urban populations consistently rated higher as investment and development options by respondents interviewed and surveyed in the PwC and ULI study (PwC and ULI, 2014, p. 34). These shifts place a premium on creating and reinvesting in urban centers—areas with potential to draw new residents, businesses and outside investment.

## AGING IN PENNSYLVANIA

Another notable trend with implications on every level of government is the growth in the elderly population across the nation and Commonwealth. A combination of factors including a large cohort of baby boomers at or approaching retirement age and increasing average life expectancy has led to the growth of an aging population. Projections indicate that this growth is to continue. The Pennsylvania Independent Fiscal Office (IFO) released a five-year economic outlook report in fall 2014 that included detailed demographic projections for the Commonwealth. The report showed that, demographically, over the next five years, the number of residents in aged 20-35 (millennials) and 55-75 (boomers) are projected to increase. According the IFO analysis the older cohort is projected to grow the most significantly over the next five years (Pennsylvania Independent Fiscal Office, 2015, pp. 5-7). The projected growth of an aging cohort in PA is consistent with similar trends throughout many states. With this in mind, it's important for local governments to consider the impact of these aging baby boomers and proactively plan to meet the service and community interests of this generational cohort.

It appears that the Commonwealth has been gearing up to serve this older population. The state developed a State Plan on Aging to guide its services and Department of Aging operations through 2016. The second of four goals in the plan is to “empower older individuals to remain in the setting of their choice by serving as **a catalyst in developing communities as places in which to age and live well** (Dept. of Aging, 2012).” The plan was drafted to be fluid and amended as needed, an indication the Commonwealth intends to stay amenable to emerging trends and best practices meeting the demands of the state's older residents. Considering the demographic forecast, a similar goal should be integrated into municipal strategic, community building plans.

## Changing Housing Demands for an Aging Population

The previously referenced *State of the Nation's* Housing Report, published by JCHS of Harvard University, analyzes the emerging housing demands of older residents in the United States. The study indicates that the current decade is on pace to be strongest in US history in terms of rental household growth by a wide margin (see Figure 9). Besides millennial demand for rental units, the JCHS housing report found that residents aged 55 and over accounted for nearly 45 percent of total rental growth over the past decade (Joint Center for Housing Studies of Harvard University, 2015, p. 25). This JCHS finding corroborates with other sources (such as the PwC and ULI analysis on emerging real-estate trends) and indicates increased movement into more dense, sustainable settings by those at or nearing retirement age.



## *Aging in Place*

In 2014 the JCHS of Harvard University released a study looking specifically at contemporary housing issues for the elderly. The report, *Housing America's Older Adults*, outlines the housing needs and solutions for an aging generation of baby boomers. The JCHS report references several surveys that evidence a preference among older adults to age in place. The report cites the Center for Disease Control's definition of aging in place—a definition that includes *moving* within a community to more suitable, age-friendly housing. The analysis outlines four fundamental, housing-related, tenets central to the aging in place conceptual framework. These central tenets are:

- Affordable, secure, and physically assessable housing;
- Affordable, secure, and physically assessable housing;
- Affordable, safe, and reliable transportation alternatives for those unable or unwilling to drive;
- Opportunities to engage in recreational, learning, cultural, volunteering, and/or social experiences; and
- Options for in-home health care and/or assistance with activities of daily living. (Joint Center for Housing Studies of Harvard University [JCHS], 2014, p. 4)

The study then outlines recommended policy initiatives to aid all levels of government in creating age-friendly environments and housing options. The first two policy recommendations offered in the JCHS report are: (1) expand the array of housing options and (2) promote alternatives to automobile travel. The first policy recommendation is to be accomplished at the local level through adaption of zoning and land-use ordinances that better accommodate an increased supply of accessible housing and mixed-use development practices (JCHS, 2014, p. 36). Municipalities also have a role in alternative transportation options, but this type of transportation initiative often necessitates inter-governmental or agency partnerships. Both of these quality of life initiatives for older adults are in alignment with broader community planning and development movements including smart growth and new urbanism.

## COMMUNITY PLANNING TRENDS

After review of several widespread demographic and societal trends, this section will now look at contemporary community planning trends, many of which have evolved in response to these societal shifts. These community planning trends and best practices are not intended to be prescriptive; but rather, these trends will be reviewed in order to outline the current community planning landscape. Although all these community planning practices and approaches are unlikely to be a good fit for every local community, each is certainly worth consideration and exploration.

## SUSTAINABILITY

Sustainability, as in many other professional fields, has become a major focus in the planning community, beginning in later part of the 20<sup>th</sup> century and intensifying over the past few decades. Community sustainability, in a community/economic development context, has three principal arms or pillars: economic development, environmental conservation and social equity (the three E's of sustainability). These three pillars are substantiated in a sizeable body of research regarding sustainable community and economic development (Adams, 2006, p. 2; Zeemering, 2009, pp. 249, 266-267; Opp and Saunders, 2012, pp. 681-682). The three interrelated pillars form a “triple bottom line” for local decision makers and help in evaluation of a community development project's holistic impact (economic, environment and social). Recently, the U.S. Economic Development Administration (U.S. EDA) supported the development of a Triple Bottom Line (TBL) assessment tool to assist governmental entities in analyzing community development projects. The TBL assessment tool—a collaborative project engineered by economic development experts from Portland State University—integrates the sustainability pillars, assessing a project's net *economic, environmental* and *social* impact and generates a composite TBL score (Hammer et al., 2014). Some of the specific components assessed within these three broad pillars include: the financial viability of the project; creation of quality jobs; impact on business in the area; green design and construction; resources consumed and emissions produced per job; impact on transit accessibility; walkability; public spaces; and availability of affordable housing. This trend towards sustainable development, decision making and community planning, looks to deter decisions made with parochial motives and myopic assessment criteria, such as traditional bottom-line decisions—made solely based on financial considerations without respect to other very valuable community impacts. Community development projects with the greatest composite score or benefit graded over these sustainability metrics are then chosen for adoption and implementation. Although the TBL tool is on hiatus, paused for continued development and more funding<sup>11</sup>, the tool was in operation as a free web-based service from 2012 to 2015. Federal financial support for this tool further legitimizes the movement toward more sustainable development, including, in many cases, the shift to new-urban or smart growth planning approaches. These trending planning schools and some associated practices and benefits will be reviewed in the following sections.

## SMART GROWTH AND NEW URBANISM

Numerous studies over the past decade have examined the holistic socio-economic effects of community development patterns. In particular, urban sprawl—the development type which prevailed over a majority of the 20<sup>th</sup> century—has been contrasted to the more highly regarded smart growth or new-urban development models. In the most general sense, the urban sprawl vs. smart-growth development approaches differ in overall housing density, associated land-use characteristics and transportation modes. Urban sprawl is generally characterized by low-density, single-family detached housing; separated land uses; limited transport options and high automobile dependency. In contrast, smart growth is generally characterized by more dense and diverse housing development; mixed-use

<sup>11</sup> The TBL site - <http://tbltool.org/index.php> - as of March 23, 2015, states: “The TBL Tool was publicly accessible from August 2012 through January 2015 through a grant from the U.S. Economic Development Administration. The TBL Tool is on hiatus while options for self-sustaining operations and enhancements are explored.”

zoning policies that converge different land uses; and multimodal transportation options (not dominated by autos). Smart growth is an increasingly popular trend in contemporary community planning and more closely aligns with the previously discussed sustainability principles. In contrast, urban sprawl now generally carries a pejorative connotation among planners and community/economic development experts.

A March 2015 study—*Analysis of public policies that unintentionally encourage and subsidize urban sprawl* (Litman, 2015)—published by the Victoria Transport Policy Institute (VTPI) and London School of Economics (LSE) examines urban sprawl in United States metro areas. The study succinctly compares smart growth and sprawl as forms of development (See Table 5).

**TABLE 5 - Development Characteristics: Sprawl v. Smart Growth**

Characteristics	Sprawl	Smart Growth
Density	Lower-density, dispersed activities.	Higher-density, clustered activities.
Land use mix	Single use, segregated.	Mixed.
Growth pattern	Urban periphery (greenfield) development.	Infill (brownfield) development.
Scale	Large scale. Larger blocks and wide roads. Less detail, since people experience the landscape at a distance, as motorists.	Human scale. Smaller blocks and roads. Attention to detail, since people experience the landscape up close.
Services (shops, schools, parks, etc.)	Regional, consolidated, larger. Requires automobile access.	Local, distributed, smaller. Accommodates walking access.
Transport	Automobile-oriented. Poorly suited for walking, cycling and transit.	Multimodal. Supports walking, cycling and public transit.
Connectivity	Hierarchical road network with many unconnected roads and walkways.	Highly connected roads, sidewalks and paths, allowing direct travel.
Street design	Streets designed to maximize motor vehicle traffic volume and speed.	Reflects <i>complete streets</i> principle that accommodates diverse modes and activities.
Planning Process	Unplanned, with little coordination between jurisdictions and stakeholders.	Planned and coordinated between jurisdictions and stakeholders.
Public space	Emphasis on private realms (yards, shopping malls, gated communities, private clubs).	Emphasis on public realms (shopping streets, parks, and other public facilities).

Source: Litman, 2015, p. 10

According to the report, sprawl is closely associated with many economic inefficiencies and is considered adverse to the health and social wellbeing of many U.S. neighborhoods. The study details many of sprawl's internal costs (i.e., cost of fuel for a given motorist) and external costs (i.e., cost of deterioration and maintenance of public highways, traffic congestion). Some of the economic inefficiencies and specific costs inherent to sprawl covered in the analysis include:

- the displacement of agriculturally and ecologically productive lands;
- increased public infrastructure cost and infrastructure service costs;
- reduced accessibility for non-drivers; and
- increased transportation costs, including greater:
  - facility expenses
  - travel time
  - consumer expenditures
  - traffic accidents
  - pollution emissions (Litman, 2015, p. 3).

Other factors or costs of sprawl considered in the VTPI and LSE study were harder to monetize. For instance, research from the study found that Americans who live in sprawled neighborhoods are between two and five times more likely to be killed in car accidents and twice as likely to be overweight compared to those living in more walkable neighborhoods (Litman, 2015, pp. 32, 33).

According to the study, counting only the costs that could easily be monetized, urban sprawl imposes an estimated \$1 trillion drain on the U.S. economy per year. Study author Todd Litman recommends smart growth as a more productive alternative approach to community planning. Litman does not consider anti-sprawl policies or smart growth adoption untenable for current suburban oriented communities either. In a comment on his study, Litman explains:

“Smart growth is not anti-suburb. Instead, it ensures that diverse housing options are available and incentivizes households to choose the most resource-efficient options that meet their needs. We are now seeing growth in demand by millennials and the elderly for affordable, compact housing in accessible and multimodal neighborhoods. However, current government policies tend to favor larger, less-accessible homes. For example, in most communities there are strict limits on development densities, restrictions on

multifamily housing and excessive parking requirements, which drive up housing costs and encourage sprawl. Consumer preferences are changing; government regulations on housing should too (The Global Commission on the Economy and Climate, 2015)."

Litman's comments on the need for adaptive, reengineered land-use and zoning policies are echoed by a recent *Economist* article addressing the net economic effect of sprawl inducing policies. The April 2015 *Economist* article estimates antiquated zoning and land-use laws, purposefully designed to control density, artificially reduces the supply of housing in urban areas, and in effect, causes housing cost inflation. This arbitrary housing density restriction prevents potential increases in economic activity and productivity. The *Economist* study estimates that restructured zoning laws in U.S. metros, removing urban growth barriers, could increase national GDP by between 6.5 to 13.5 percent, or about \$1 to \$2 trillion (*The Economist*, 2015). The *Economist* article corroborates with the VTPI and LSE study as well as the trending principles of sustainable community development—principles in support of increased housing density and economic efficiency.

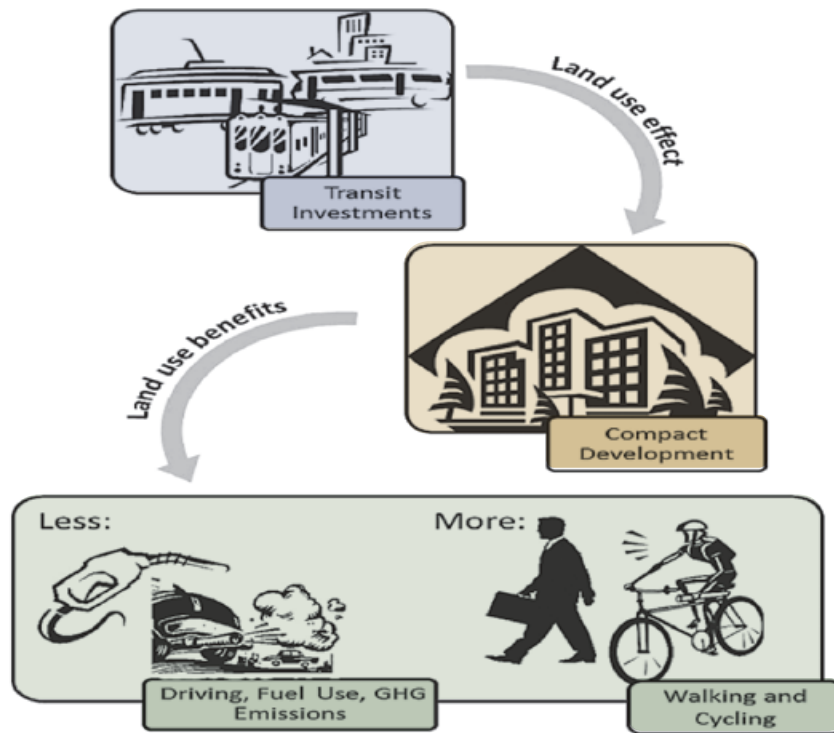
Walk Score, an online web service, is a good, practical example illustrating the profound effect of these emerging trends. This free online service grades the walkability of homes, apartments and communities and has become a popular real-estate buyers' tool. The web-based organization has received grants from the Rockefeller Institute and Robert Wood Johnson Foundation to help develop its statistical scoring model that grades the walkability of each home. Organizations, programs and services such as Walk Score address the increasing demand for compact, walkable, human-scale communities that are not automobile dependent. Walk Score's goal is simply to help create walkable neighborhoods, with a clear mission statement: "Walkable neighborhoods are one of the simplest and best solutions for the environment, our health and our economy" (Walk Score, 2015). Walkability is a central tenet of many of the other smart growth or new-urban approaches, including mixed-use and transit oriented development.

## PUBLIC TRANSIT, MULTIMODAL TRANSPORTATION AND LAND USE

Another recent community planning related study supplementing both the VTPI/LSE and *The Economist's* research is a work from the Transit Cooperative Research Program (TCRP), sponsored by the Federal Transit Administration. The TCRP study details the land-use effect of public transit. The analysis finds that public transit systems confer community benefits not limited to associated transit ridership. These other benefits are land-use related, termed the "*land-use effect of transit*" (Gallivan et al., 2015). The TCRP study finds that the introduction of public transit, in many cases, promotes more compact development in a community which, in turn, provides land-use benefits such as increased walkability, reduced fuel consumption, vehicle miles traveled (VMT), and greenhouse gas (GHG) emissions (See Figure 10).



Figure 10 - The Land-Use Effect of Transit



Source: Gallivan, et al., 2015, p. 9

In addition, the TCRP study finds that, in aggregate, U.S. urbanized areas, absent of transit systems, would consume an *estimated 37 percent more land* in order to house current populations. This finding illustrates the pronounced effect of transit systems in increasing land development density—a central smart-growth tenet. (Gallivan, et al., 2015, p. 3). Furthermore, according to the study, by inducing more compact development, transit systems are linked to an 8 percent decrease in vehicle miles traveled as well as fuel consumption and GHG emissions nationally. The study’s research findings support the previously discussed analyses, expounding on the benefits of more compact, mixed-use, multimodal development, otherwise known as smart growth or new urbanism.

To complement its research the TCRP developed a free, downloadable, Excel-based tool for users to model the projected benefits of new transit investment—reduced VMT, GHG emissions, and fuel consumption—in urbanized areas throughout the U.S. The tool allows users to choose from pre-programmed urbanized areas in each state or specify a custom area to model. A user-guide is available as part of the TCRP research study report (Gallivan, et al., 2015, p. 32).

The TCRP study, like those previously referenced, supports the adoption of smart growth and sustainability principles into community planning, these principles align with new social, economic and environmental movements and demands. Many of these demands have been discussed in this analysis, including more pedestrian-friendly, multimodal communities with a greater focus on increased

accessibility; transit-oriented development; compact and diverse housing options; mixed land uses; attractive public amenities; and a unique community appeal or brand. Additionally, the studies cited clearly outline the economic, social and environmental benefits associated with smart growth oriented community planning and development. Despite clear-cut evidence and research, many localities have not actively pursued adapting to these new demands and have not committed to fully integrating these trending community planning approaches. Accordingly, a great opportunity exists for many municipal communities and even groups of stakeholders with legitimate desires to incorporate under the borough code. Localities or regional groups of localities (i.e., councils of governments, regional economic development authorities, and regional planning collaboratives) that make concerted efforts to adjust to these trends are more likely to meet these emerging demands and market themselves as attractive communities for residence and business. In terms of borough incorporation, groups of stakeholders desiring to incorporate would be well advised to integrate many of the trending community planning practices into their incorporation proposals. Integration of the day's best community building practices with a good-faith intent to execute such plans presents a reasonable way to strengthen a group's argument for incorporation. This is especially true based on past incorporation cases where county courts have seemingly been amenable to following the lead of legislative and, by proxy, social trends.

The final section of this report will drill deeper into practical ways that PA municipalities may capitalize on opportunities related to the broad trends just discussed. The five-fold desirability factors from Section 202 of the Borough Code will be woven into this discussion as well. These five factors, according to the PA legislature, characterize a desirable borough; and in accordance, the following opportunities for boroughs, and other municipalities, should, in some fashion, satisfy these criteria.

## 2.2 Opportunities

As referenced in the previous trends discussion, there is a distinct urbanization movement in the U.S. and worldwide. For social, economic and environmental reasons people are migrating to urban areas. This urbanization trend has been supported by smart growth and new-urban community planning principles which have gradually become consensus best practices in the professional field. A new generational cohort with a documented preference for a more urbanized, connected, less automobile-dependent lifestyle is now fully integrating into the workforce. Baby boomers, on the other hand, are slowly exiting the workforce but are also showing increased interest in more compact housing, settling in pedestrian-friendly, accessible communities where they can remain active and will not be in isolation as they age. Nationally, oil consumption and total vehicle miles traveled have declined since the Great Recession and have not rebounded as quickly as the overall economy, indicating, in part, that travel behavior has changed. For localities that wish to stay attractive locations for residence and business, adaptation to these broad trends will be essential. With a view to the future, collectively, these interrelated trends foreshadow the bounds of opportunity for local communities. Examples of such opportunities will be discussed in this section and framed within the context of the desirability factors outlined in Section 202 of the Borough Code—factors which help provide definition as to the character of a desirable borough.

### COMMUNITY PLANNING

In light of current community planning trends, local governments are presented with a great opportunity to review their comprehensive plans and should consider adjusting their plans to better align with trending best practices. Reworked plans should emphasize smart growth or new-urban principles, including pedestrian-friendly communities and transportation systems providing greater accessibility within the community. Integration of new or improved transit options should be explored (this may require intergovernmental collaboration and planning). Many municipalities across the country are now adopting complete streets policies that require new road construction projects or improvements to better accommodate bikers and pedestrians, including biking lanes, and more dedicated sidewalk and cross-walk space. In addition, local zoning, sub-division and land-development ordinances should be reviewed and policies that restrict compact development or include excessive parking and road-width requirements should be reconsidered. These outdated policies, as discussed in the trends section, discourage infill, walking, promote automobile dependency and sprawl. Trending policies prioritize mixed land uses, emphasizing increased housing density and the convergence of commercial and residential areas. Although there is no one-size-fits-all plan for community planning/development, and adopting a cookie-cutter approach risks losing a unique community brand, these general principles can help create a vision to guide individually adapted community plans. Both existing municipalities and groups of stakeholders looking to petition for incorporation would be well advised to consider the formulation or adaptation of community plans that integrate many of these trending, best practice approaches.

Changes to a community's design and strategic development plan clearly requires a significant amount of consensus building and forethought. With that said, responsive and expeditious action—relatively quick changes with immediate impacts—is not necessarily precluded. Some drawbacks of more extravagant master plans are that are often costly, can take years to implement (or even get moving), and can generate unforeseeable consequences. Although a broad vision is necessary, localities are increasingly adopting an approach termed “urban acupuncture” (Ehrenhalt, 2014) into their community development philosophies. This type of community development emphasizes quick, practical, and relatively low-risk community mediations that reap immediate results. These types of small improvements demonstrate visible commitment to community enhancement and can often serve as pilot projects or building blocks to more grandiose and better vetted community development ventures. A few typical examples of urban acupuncture include new crosswalks with better visibility and increased space for pedestrians, rehabilitation of curb ramps, introduction of street trees, new and attractive bus shelters for transit, and small pop-up parks replacing under-utilized parking lots. Many of these projects are relatively quick and inexpensive but help to set a tone within a community and can have big positive impacts.

## STATE SUPPORT

The Commonwealth has actively promoted and incentivized local planning and community development in alignment with trending community planning principles. In recent years, the General Assembly and various state agencies have developed and administered programs to promote increased transit use in urban areas. These programs can help with the funding of complete streets projects and other projects geared towards increasing multimodal transportation accessibility and transit-oriented development. Several of these programs that are currently available and likely to continue into the future are detailed below. The programs listed are illustrative highlights and are by no means exhaustive; visit the PA Department of Community and Economic Development's website for a more comprehensive list of local government funding and grant opportunities.

### Transit Revitalization Investment District (TRID)

After unanimously passing the Senate, a bill amending the 2004 Transit Revitalization Investment District (TRID) Act has been referred to the PA House Transportation Committee for review. The bill would improve and further promote the currently under-utilized 2004 act which allows municipalities to establish Transit Revitalization Investment Districts (TRIDs) to promote increased development around and access to transit hubs<sup>12</sup> (PA General Assembly, 2015). Local TRIDs would be established by municipal ordinance. In order to establish a TRID, municipalities are required to conduct a TRID planning study and form partnerships with local public transit agencies. The TRID planning study should also be reinforced by changes to a municipality's comprehensive plan and zoning ordinance in order to support the TRID plan. The TRID Act and its proposed amendments allow partnering public transit agencies to acquire properties

<sup>12</sup> The TRID Act dictates that the TRID area is not to exceed a one-half mile radius from a railroad, transit, light rail, busway or similar transit stop or station. TRIDs, according to this statutory definition, are designed to be compact development areas that support walkable, multimodal communities.

within the TRID for development or redevelopment by third-party, private developers with municipal approval and in accordance with the TRID plan. Incremental increases in real-estate tax revenues resulting from these improvements would be dispersed to municipal general funds and reinvested into the TRID for public infrastructure and transit infrastructure improvements. In addition, the Commonwealth, using a formula, would support each TRID with a portion of the area's state taxes. These state tax monies are to be used to support the TRID's development according the TRID plan and would assist in covering costs related to execution of the TRID plan, including debt-service payments on any bonds issued for necessary infrastructure improvements.

The TRID program amendments, with strong bi-partisan support, evidence the public policy initiative to promote transit-oriented development and denser, mixed-use development generally associated with active public transit systems. Programs such as TRID offer great opportunities for existing municipalities in the form of economic growth and community development. It's also likely a good point of emphasis for stakeholder groups looking to incorporate, as it appears a shift toward more transit-oriented, walkable communities is desirable in the eyes the PA legislature and, by proxy, the residents of the Commonwealth.

### Multimodal Transportation Fund

Commonwealth support and backing for municipal investment and rehabilitation of transit and multimodal transportation is also evident in other state programs. For instance, the Department of Community and Economic Development (DCED) the Department of Transportation (PennDOT) are jointly supporting municipalities through the Multimodal Transportation Fund Program. The Multimodal Transportation Fund is designed to assist municipalities in financing—through grant disbursements—multimodal transportation projects as well as community improvements to support and enhance existing multimodal systems. Eligible projects for this program fall into four main categories outlined in the program's guidelines: (1) projects that coordinate local land use with transportation assets to enhance existing communities; (2) projects related to streetscape, lighting, sidewalk enhancement and pedestrian safety; (3) projects improving connectivity or utilization of existing transportation assets; (4) and projects related to transit-oriented development (development concentrated around and oriented to transit in order to promote transit ridership and its associated benefits). Specific examples of eligible projects listed in the program's guidelines include: intercity bus and rail service improvement, bus stops, transportation centers, park and ride facilities, sidewalk/crosswalk safety improvements, bicycle lanes/route designation, sidewalk connections, pedestrian and traffic signals, pedestrian signs and lighting, streetscape amenities (i.e. affixed benches, planters, or trashcans), relocation of transit routes, transit shelters, and pedestrian improvements to and from transit stops (PA DCED, 2015, pp.1-3).

### Pennsylvania Infrastructure Bank

The Pennsylvania Infrastructure Bank (PIB) offers another means of financing many similar public infrastructure projects. The PIB program is administered by PennDOT and offers low, below market infrastructure loans to municipalities for public infrastructure improvements. Eligible PIB projects include

transit and inter-modal infrastructure, street improvements, cross walks, lighting, and traffic/street signs (PennDOT, 2014, pp. 6-8).

State administered programs such as the PIB, the Multimodal Transportation Fund and TRIDs further incentivize the implementation of many of the aforementioned trending community development approaches. These programs offer state support for community development projects in alignment with smart-growth and new-urban principles heightening the level of opportunity for localities to integrate these trending practices and principles into their community plans, land-use and zoning policies. Localities with updated plans that emphasize smart growth and new-urban principles/ design are likely to be more competitive in applications for state support in new community development ventures. In addition, stakeholder groups with legitimate motives and desires to incorporate should consider adopting plans for proposed communities that align themselves with these state endorsed funding programs.

### **SMART GROWTH/NEW URBANISM AND THE BOROUGH DESIRABILITY FACTORS**

The adoption or amendment of plans to align with these state endorsed programs and their underlying community planning initiatives is also likely to be beneficial in satisfying the borough incorporation desirability factors outlined in Section 202 of the Borough Code. Although it's not fire or police, access to enhanced transit options and pedestrian friendly infrastructure should be considered an "appropriate community facility service" as described in the first desirability factor. Communities with compact, pedestrian friendly, and/or transit-oriented development patterns are more likely to be viewed as a harmonious whole with distinct interests and service needs; and in turn, these communities are more likely to satisfy the second desirability factor. In addition, smart growth and new-urban planning generally offers mixed-use development—a convergence of residential, commercial and even light industrial development types. This sort of development mix may help to fulfill the variety of land-use borough desirability criterion—the third desirability factor—and likely requires less land area to achieve such diversity. Furthermore, an increase in housing density and multi-family units typical of transit-oriented and smart-growth communities may help ensure the proposed borough's land-use plans are not exclusionary, supporting the fourth desirability factor. The overall financial effect of an incorporation—the fifth desirability factor—applies exclusively to individual incorporation situations. With that said, generally speaking, a good argument could be made for the increased economic efficiencies associated with smart-growth or new-urban oriented communities. Nevertheless, it's clear that trending planning and community development practices are in harmony with the desirability factors enumerated in Section 202 of the Borough Code—factors serving as criteria to help define the makeup of desirable borough.

### **URBANIZATION AND GENERATIONAL TRENDS**

Similar opportunities for localities stem from the previously reviewed urbanization and generational trends. The strong national urbanization shift presents opportunities for urban-oriented municipalities to make their communities attractive landing spots for new residents desiring to migrate into a more

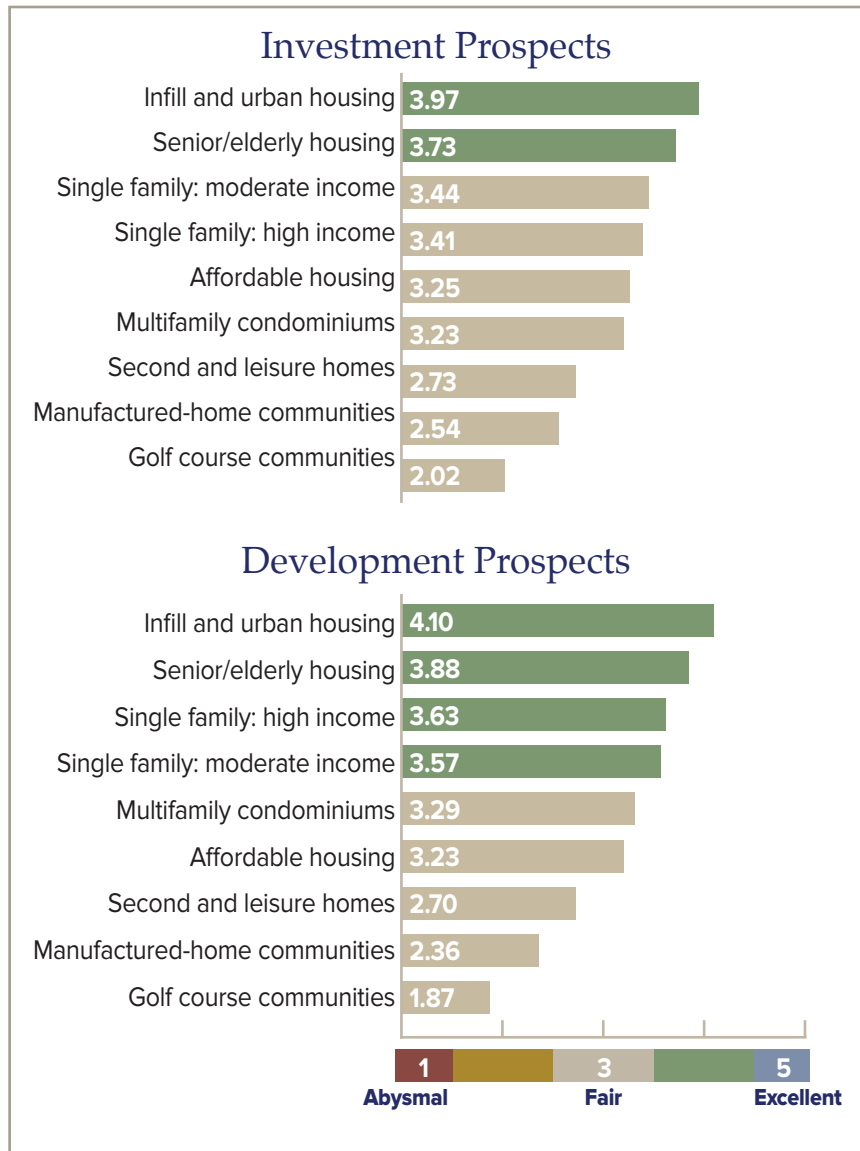


urban setting. How this looks at the local level will inevitably vary from municipality to municipality; however, there are some broad approaches that should guide efforts to welcome urban infill. For instance, investment in a community's urban housing stock or revitalization of multifamily and compact housing units in close proximity to transit and other community amenities is likely to be a fairly universal objective in order to encourage infill. The PwC publication on 2015 real estate trends projects "infill and urban housing" real estate projects as the top investment and development option for real estate investors and developers in 2015 (see Figure 11).

One investor surveyed in the PwC study foresees millennial demand for urban settings spilling over into smaller and more affordable cities and urban areas as the costs of rental units in larger cities escalates (PwC and ULI, 2014, 74). Generational trends also indicate that urban-area housing investments appear prudent. An increasing percentage of millennials are renting, utilizing public transit, and have a documented preference for urban settings and lifestyle. In addition, research shows that new-urban homes also seem more resilient in terms of value retention (Dong, 2015), making community investment in smart growth and new-urban housing less of a risk.

It's clear, in light these documented trends and an extensive body of research, that ample opportunities and incentive exists for boroughs and other municipalities to meet these emerging housing demands.

**Figure 11 - Residential Property Types, Investment/Development Prospects for 2015**



Source: *Emerging Trends in Real Estate 2015 survey.*

## SERVING AN AGING POPULATION

The aging demographics of PA offers similar opportunities for local governments throughout the Commonwealth. The previously discussed PA IFO economic outlook report projects Pennsylvanians aged 55-75 to grow the most of any age demographic over the next five years and following. Recent research indicates many in this age range are staying in the workforce longer than anticipated and, like millennials, are interested in sustainable living environments, including urban areas<sup>13</sup>, that connect them to their community without automobile dependency as they age. Accordingly, the movement towards more sustainable communities characterized by smart growth features including transit accessibility, pedestrian friendly amenities, walkability, and more compact development, may appeal to both millennials and baby boomers entering retirement. This heightens the opportunity for local governments and stakeholder groups looking to incorporate a new borough as many of the issues that will propel change in community design and function (subdivision and land-development ordinances, zoning ordinances, public infrastructure, strategic/comprehensive plans, economic development planning, etc.) fall within the purview of local governance in its community-planning and development capacity.

A recent national study by the Milken Institute, ranking the best communities for successful aging, developed a grading index composed of research-tested criteria to gauge the livability of metro areas for the U.S.'s aging demographic. The study emphasized connectivity as a desirable community characteristic for aging adults in or approaching retirement. One of the criterion integrated into the grading index was termed "transportation/convenience." Within this assessment criterion, the number of public transit passenger trips, percentage of commuters who walk to work, and a percentage of seniors near grocery stores were weighted the heaviest (Chatterjee and King, 2014, p. 50). Here again, the same community themes and approaches valued by millennials when surveyed are likewise being valued by their predecessors who are exiting the workforce and looking to remain connected and integral members of society. Considering the desirability factors outlined in Section 202.1 of the Borough Code, it's evident that many of the characteristics considered in the Milken study that make a community a place for successful aging, are also elements of a desirable borough according to the PA Legislature. For instance, community support services are essential and in demand by aging demographics (first desirability factor), as well as diversity of land uses (third desirability factor) and housing options that offer accessibility and affordability (fourth factor). The overlap between trending community planning approaches with the legislature's conception of a desirable borough community (desirability factors) is clear.

Offering an age-in-place option to residents of the Commonwealth is stressed in the State Plan on Aging which outlines the Commonwealth's objective to serve as a "catalyst" in assisting communities to develop in a manner that accommodates the needs of an aging demographic. This may be challenging for communities oriented around sprawl development patterns. In these scenarios, aging-in-place

<sup>13</sup> Oxford Journals recently published a series of articles collectively entitled, "Making a Home in the City: The Age-Friendly Community Movement" in the 2015 winter issue of its Public Policy and Aging Report. As the title implies, the issue details how urban communities are experiencing an uptick in their aging populations and the responses to this phenomenon.

is generally more challenging as aging residents are forced to remain automobile dependent making community amenities, services and goods less accessible. Although this development structure is less than ideal, opportunities for community adaptation exist.

## SUBURBAN RETROFITTING

There are practical steps that can be taken for sprawl oriented localities to retrofit their community to more closely align with more sustainable and age-friendly community planning and development. These steps should be viewed as opportunities, key for both existing municipalities looking to evolve and innovate as well as petitioning stakeholders drafting plans for a new borough from pre-existing, sprawl-oriented development.

Georgia Institute of Technology Professor Ellen Dunham-Jones has spent over a decade researching the redesign and reengineering of suburban development to meet the social and market demands for more sustainable, urban living environments. The objective for this type of conversion is quite simple: convert community weaknesses, including unsustainable and underperforming development (typically postwar sprawl), into more sustainable and in-demand community features. Dunham-Jones, in a 2010 TED Talk,<sup>14</sup> outlines two major retrofitting methods derived from case studies on underperforming suburban communities: *reuse* and *redevelopment*. These approaches are not mutually exclusive and are often used in tandem. Communities with underperforming asphalt (old underutilized parking lots, failing/underperforming box stores, malls) may want to redevelop the land into green space or community amenities (parks, libraries, mixed-used development pockets). These changes can be ad-hoc, creating “pockets of walkability” for residents before adapting a larger redesign or redevelopment plan for larger community corridors (Dunham-Jones, 2010). Such redevelopment or reuse takes a vision, local leadership and public will; local government initiative is generally the driving force for this type of change and adaptation. It is incumbent on local government leadership to spearhead the development of sustainable communities.

In a new, quickly evolving era characterized by changing lifestyles and preferences, opportunity exists for local governments in PA to capitalize on these broad trends by turning any existing weaknesses into future community assets. These broad societal shifts should give localities the impetus they need to make necessary changes that support these broad movements. For example, municipalities that have need of substantial transportation infrastructure rehabilitation should consider integrating multimodal options into their plans before funding a status-quo 20-year highway reconstruction project. Localities should consider adopting complete streets policies that require the evaluation of multimodal (walking/biking/transit) transportation options and their integration into the community before finalizing transportation funding for road rehabilitation or expansion work. Likewise, changes to local policies affecting a community’s housing (i.e., comprehensive plans, zoning and land development ordinances), should be reevaluated and, if necessary, revised to promote denser/more compact, mixed-use

<sup>17</sup> TED is a nonprofit organization offering an online service devoted to spreading ideas through short, powerful talks.

housing to meet market demands, support pedestrian activity and transit usage. Commonwealth support and endorsement of these initiatives heightens the incentive and opportunity for localities and petitioning groups alike.

# Conclusion

In conclusion, following the growth of new borough incorporations in the 19<sup>th</sup> and early 20<sup>th</sup> centuries—under the urban growth development model—new borough incorporations have waned in the latter half of the 20<sup>th</sup> and first decade of the 21<sup>st</sup> century with the latest incorporation taking place 22 years ago. Much of this decline may be attributed to changing societal and legal paradigms: with automobile usage becoming ubiquitous after World War II; the dominance of urban-sprawl development, relocating droves of people from urban municipalities to the suburban and rural periphery; and the legislature and courts instituting more rigorous boundary change and incorporation laws. Chapter 2 of the Borough Code, which enables new borough incorporations, has been amended several times over the past 35 years, with substantive revisions in 1981, 1992 and 2012. These provisions have made the requirements for incorporation more stringent and have increased the burden of proof required of petitioners desiring to incorporate a new borough.

Review of significant incorporation cases covering the past 30 years offers insights for any future incorporation proposals. Although the incorporation judicial review process—a process predicated on broad county court discretion—lends itself to ambiguity, some general observations can be gleaned and extrapolated forward. Generally, new development incorporation proposals with detailed prospective community plans and design, such those in the Seven Fields and New Morgan cases, have fared better in court. These proposals were detailed and accompanied by in-depth financial projections and prospective budgets agreeable, for the most part, to all parties. In addition, these new development proposals promised regional economic development proven to be stalled by an existing township either through inadequate service capacity or onerous, untenable zoning and land-development policies. With Act 181 of 1992 requiring a 500-resident minimum in areas proposed for incorporation the potential for these “new development” proposals has, to a degree, been limited as future petitioners will be required to work with or around existing development. Nevertheless, the principles inherent in these new development proposals still offer the most likely avenue for prospective petitioners’ success in court.

Looking ahead, incorporation proposals that align with social and community planning trends, integrating a mix of contemporary best practices, are most likely to garner public support and be found favorable through the judicial review process. Some of these community planning and design trends include sustainable, smart growth oriented communities; transit oriented development; compact housing; complete streets; and pedestrian friendly amenities. Many of these market-driven community planning trends are in close harmony with the five desirability factors to be analyzed in review of an incorporation proposal. Additionally, these trends are supported by various state funding programs evidencing the Commonwealth’s endorsement of the initiatives. Courts have considered contemporary legislative tides and priorities in the past when determining incorporation desirability, so it’s reasonable to assume proposals in alignment with state supported programs and broad social trends may be viewed favorably in future court review.

A fundamental question at the heart of the borough incorporation issue, a question not specifically considered in the Borough Code, is: why would a group of stakeholders desire to incorporate a new borough? Or, phrased in a different way, is there any inherent, intrinsic value specifically associated with the borough form of government that appeals to stakeholders? Until recently most answers to these questions were not compelling. Local services throughout the latter half the 20<sup>th</sup> century extended to the periphery, providing these areas with essential service previously only available in urban municipalities. Since the onset of many of the aforementioned trends, a better argument may be made for incorporation. Historically, boroughs by default, exhibited many of the trending smart growth characteristics with more compact, sustainable development and infrastructure, operating as self-contained, walkable communities with accessible public amenities. As this development/planning model has regained popular support, the argument for borough incorporation has also conceivably been strengthened.

Upon review of the incorporation process and case history, the opportunities apparent for future petitioners in many ways parallel opportunities for revitalization of existing municipalities. As with prospective incorporation, the confluence of various reciprocal and self-perpetuating societal trends foreshadow the bounds of opportunity for development and growth of local governments. Societal movements including urbanization; decreased oil dependency; concern with green-house gas emissions, increased transit ridership; a growing number of renter households; a millennial preference for urban communities; and a baby boomer interest in age friendly, accessible communities all promise to have impacts on local governance. In addition, the professional community planning field has adapted to these sweeping trends, adopting emerging best practices that support these trends and encourage more compact, mixed-use development. These community features are demand driven as the real-estate market for compact housing, urban infill and multi-family units has witnessed unprecedented growth over the past decade.

In light of these trends, existing localities are presented with a great opportunity to reevaluate land- development and zoning ordinances to ensure that they do not restrict but rather promote these demand driven movements. Localities should pursue policy changes to help retrofit or redevelop sprawl-oriented communities to better conform to and promote these planning/development trends. Examples include but are not limited to: complete street policies, the reduction or elimination of minimum parking requirements, decreased setbacks to promote compact development, reduced lane width on urban arterials to control traffic speed, improved sidewalks, crossways, transit shelters, pedestrian signage as well as mixed-use zoning ordinances. The adoption of these initiatives is not to be a pre-packaged, one-size-fits all formula, but rather should enhance a community's unique brand and local heritage. Integration of these planning initiatives should be individually tailored to each locality on a case-by-case basis.

Moving forward, with an understanding of these compounding trends and their local-level manifestations, both petitioner groups and existing local government leaders will be positioned to succeed in forming and growing communities that meet the demands of their stakeholders.



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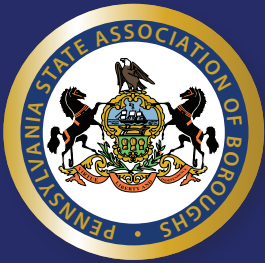
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