



Borough Incorporation and Local Government Trends Analysis



Presented by: Joshua D. Ehrman
Chrostwaite Institute, November 2015



Executive Summary

The procedure for borough incorporation in Pennsylvania has changed significantly over the past 35 years as a result of shifting community development paradigms, new legislation and impactful court rulings. A procedure frequently employed in the 19th century through the first half of the 20th century has waned drastically thereafter with the last borough incorporation occurring 22 years ago (1993).

	1920-1944	1945-1969	1970-1994	1995-2015	Total
Borough Incorporations	42	16	13	0	71

In this analysis, each of these factors (social, legislative, judicial decisions) affecting borough incorporation are considered in review of the current incorporation process. Furthermore, contemporary social, demographic and community planning trends are examined in order to analyze opportunities for current local governments and future incorporation petitioners.

Borough Incorporation: Social Factors

Following WWII automobile ownership increased exponentially resulting in a shift from urban cores to the less dense periphery. This change had a significant community development effect as urban cores would hollow out and development began to sprawl to outlining suburban and exurban areas. These areas would subsequently provide essential government services further incentivizing movement from urban settlement. This new development paradigm grew prolific and compounded throughout the latter half of the 20th century. This urban-sprawl phenomenon reversed previous development progressions—progressions resulting in urban growth—which naturally moved from rural to urban government forms as additional public services became necessary. The most current research on contemporary best practices in community planning and development advocate for increased housing density and redevelopment in urban areas for sustainability purposes, indicating a changing tide in development practices and the potential for urban revitalization.

Legal Factors

The current incorporation procedure—outlined in Chapter 2, Subchapter A of the Borough Code—is derived from a foundational 1834 statute. This statute allowed county courts to incorporate settlements within their jurisdiction as boroughs at the discretion of the court. The 1834 statute required that a petition requesting incorporation be filed at a county court, signed by a majority of freeholders (resident land owners) in the area proposed for incorporation. The signed petition would initiate the court review process. This 1834 statute has served as the model from which all other amended iterations of the incorporation procedure are based. Most notably, the petition of freeholders and county court discretion components of the 1834 law remain essential elements of the latest edition of the Borough Code (8 Pa.C.S. [2014 Ed.]).

Focusing on the most recent changes to the incorporation procedure, significant amendments were made in 1981, 1992 and 2012 (see table).

Date Enacted	Provision Description
1981	Appointment of a <i>borough advisory committee</i> required to consider incorporation desirability; voter <i>referendum</i> requirement (Act 80)
1992	Requires proposed borough to include at least 500 residents to qualify for incorporation (Act 181)
2012	Two new desirability factors codified for advisory committee assessment—expansion from three to five desirability factors (Act 43—B.C. § 202.1[d])

In 1981, the legislature passed Act 80 which required the establishment of a borough advisory committee to be appointed by county courts—courts of common pleas—in incorporation cases. The advisory committee, according to the act, is to serve as a fact-finding committee and is required to report to the court on the desirability of a proposed borough based on several enumerated desirability factors. The 1981 legislation also included a referendum amendment requiring that an incorporation petition granted by a county court be voted on by the residents of the proposed borough.

A 1992 amendment (Act 181) to the Borough Code created a 500 minimum resident threshold for any area nominated for borough incorporation. This amendment precludes incorporation proposals intending to incorporate sparsely populated areas with speculative plans for new development—proposals commonly submitted prior to the act. There have been no successful borough incorporations under the 1992 amendment. The more recent 2012 amendments to the Borough Code (Act 43) added two new desirability factors—expanding upon the three original factors—to be assessed by the borough advisory committee; these factors were codified from past court decisions. In total, there are now *five desirability factors* to be analyzed. These five factors to be reviewed in each incorporation case are listed below:

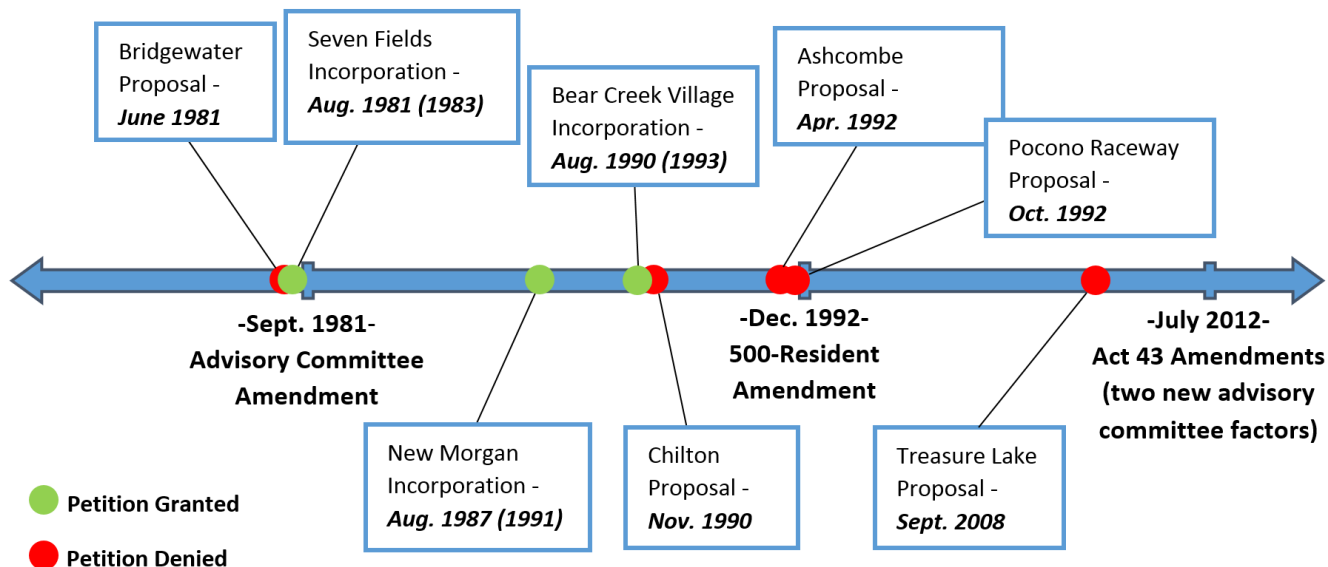
1	Ability to obtain or provide adequate and reasonable community support services (i.e., police, fire, community facilities).
2	Whether the proposed borough constitutes a harmonious whole with common interests and needs that can be best served by a borough form of government. Is the proposed borough 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 without exclusion.
5	The financial or tax effect on the proposed borough and existing township(s).

These factors merely guide the court review and evaluation process. The county court hearing a case has broad discretion and may deny a petition regardless of an advisory committee's position if any reasonable basis exists for denial.

Past Decisions

Review of numerous incorporation decisions over the past 35 years provides insights into past successes and failures by petitioners for borough incorporation (see timeline).

Timeline of Recent Borough Petition Filings



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

Collectively, there is some ambiguity in these decisions as cases with factual similarities have ended with divergent outcomes (see sections on Treasure Lake and Bear Creek Village cases, pp. 19-26). Despite this ambiguity, several general themes can be gleaned from review of past cases. Overall, petitions proposing new development with attractive and detailed community development plans have fared better in court. These development plans were generally substantiated through upfront capital investment and by the testimony of planners and engineers involved or to be involved in the development projects. In addition, successful proposals have generally offered the prospect of economic development to the region and demonstrated that such development was obstructed in some way by an existing township. Successful petitions have also included detailed financial and budgetary projections for proposed boroughs, including the prospective financial impact on existing township(s). These financial projections were conducted by third-party government finance experts and found the financial effects of the proposed incorporation to be nominal for the existing township(s) involved. Other extenuating circumstances have also played a significant role in past successful incorporation petitions—circumstances such as the existing level of community services provided and the unique geography of an area proposed for incorporation. The three most recent, successful petitions—Seven Fields, New Morgan and Bear Creek Village—serve as good examples illustrating these general themes.

In both the Seven Fields and New Morgan cases the petitioners prepared detailed community planning agendas for the proposed boroughs; committed upfront capital toward the communities' development; and were supported by testimony from engineers and planners involved with the development of the proposed borough. In addition, the plans promised regional economic development that would be suppressed if the incorporation proposals were dismissed.

As for extenuating circumstances, in the New Morgan case, the proposed borough spanned two townships, and a lack of uniform land-development ordinances across the two townships was effectively stalling the prospective community's development. In Seven Fields, the Commonwealth Court found that the prospective development would stretch the service capacity of the existing township too thin and that the existing township could not effectively service the proposed borough. The existing township in the Bear Creek Village case provided no police service, consequently incorporation of the new borough resulted in no net decline in community service provision.

Prognosticating incorporation moving forward, in light of these generalities, it appears that proposals with detailed community design and development plans, in alignment with best practices in the planning field, have the best chance of success in court. The obstacles to incorporation are substantial, having become more burdensome with the recent amendments to the procedure. However, social trends seem to be pivoting in favor of higher density, sustainable urban development which could revitalize the interest in borough incorporation as well as the argument for incorporation by future petitioners.

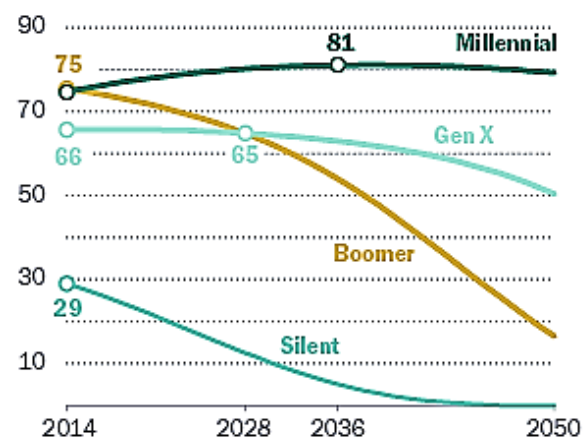
Trends and Opportunities

With community planning central to the desirability of a proposed borough, an understanding of contemporary community planning trends as well as other social and demographic movements is essential for both petitioners as well as local government officials. Part II of this study reviews these broad movements.

A bedrock trend currently impacting all levels of government is urbanization. The 2010 census reported a national 12.7 percent increase in urban population over the preceding decade, outpacing the nation's overall population growth by about 2.5 percent. Boroughs are a key part of the urban makeup of Pennsylvania and should therefore look to position themselves to cater to this demographic shift. Looking at generational trends, millennials—those aged 18-34 as of 2015—have now become the nation's most populous generational cohort (see generational cohort chart) and have distinct interests—preferring urban amenities with diverse transportation options.

Generational Cohorts Population 2014-2050

In millions



Source: Pew Research Center, 2015

An aging cohort of baby boomers are looking to retire in places where they can remain active and involved in communities without isolation. In addition, the housing market is showing strong demand for rental properties and urban-infill development projects driven by millennials and retiring boomers. These overarching, reciprocal trends present distinct opportunities for municipalities and prospective petitioners for borough incorporation. As the demand for sustainability and smart growth increases, boroughs and other urban forms of government are naturally positioned to meet such demands. Communities that make a concerted effort to increase or enhance local amenities, walkability, multi-modal transportation options and higher density mixed-use development are more likely draw new residents and businesses. Likewise, petitioner groups that make these and other community planning trends a focal point of incorporation proposals will be more likely to succeed in court.

In practice, development of these community features takes initiative on the part of local public leadership. Some foundational steps include revision of comprehensive plans to prioritize community alignment with smart growth and community sustainability practices and principles. Additionally, zoning ordinances should be reevaluated, and amended if necessary, to promote reasonable mixed-use development schemes. Land development ordinances should be reviewed to eliminate barriers to more dense mixed-use development. Unnecessary parking and street-width requirements that promote automobile mobility at the expense of walkability and transit should be revised, and public spaces that connect a community and offer increased access to amenities, local entertainment and multi-modal transportation options should be pursued. Many of these types of community development ventures are endorsed by the Commonwealth through special financing and grant programs—PIB, Multi-modal fund, TRIDs, CDBG, CRIZ, and KCP— designed to encourage municipalities to pursue such initiatives. State support heightens the incentive to adopt these local development projects. If the broad social, demographic, and community development trends outlined in this analysis continue, (as they're projected to) urban localities, and those petitioning for their formation, are likely to continue to see increased opportunities for growth and formation.