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“FINDING COMMON GROUND”

A Q&A FACT SHEET FOR COMMUNITY ASSOCIATIONS AND BUILDERS RELATING TO THE IMPACT OF THE UPCA AND PA IRC BUILDING CODE ON PERMITTING, INSPECTIONS AND COMMUNITY ARCHITECTURAL CODES

The Pennsylvania & Delaware Valley Chapter of the Community Associations Institute held an Open Forum of its Membership and the Pennsylvania Builders Association on January 26, 2005. The main purpose of the Forum was to identify existing and potential conflicts between Community Associations and Builders that have resulted due to the adoption of the Uniform Planned Community Act (Act 180, HB 1339, the UPCA) and the 2003 International Residential Building Code (IRC).

The Open Forum discussions led to an understanding that most existing areas of conflict between Community Association and the Builders were due to:

- (1) Misinterpretations of the UPCA and IRC.
- (2) Misunderstanding of the retroactive application or the controlling authority of specific sections.
- (3) Little or no specific knowledge if not a member of CAI or the PA Builders Association.
- (4) And occasional intentional conflict for purposes only known to that specific Community Association.

It was agreed prior to the Open Forum that all questions and response received at the meeting would be taken down and developed into a Fact Sheet to appear in the Chapter Newsletter. Therefore, the following questions and responses are the direct result of the Open Forum. We recommend that readers share the following Fact Sheet with Association leaders as an awareness and educational tool.

Question (1): Exactly when were the Uniform Planned Community Act (HB 1339) and the 2003 International Residential Code enacted into law?

Response (1): House Bill 1339 or the PA Uniform Planned Community Act became law on February 17, 1997. The 2003 International Residential Code applies to most changes made and contracts signed after April 9, 2004.

PENNSYLVANIA AND
DELAWARE VALLEY CHAPTER


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Question (2): Does the PA Uniform Planned Community Act prohibit Community Associations from collecting fees for building improvement permits (i.e. new construction, additions, decks, etc.)?

Response (2): No, but it does mandate that any permit/inspection fees be specific to actual direct costs, meaning work performed in issuing the permit or conducting the inspection. Charges over and above actual administrative or inspection work performed are not permitted. Therefore, fees must equal specific costs.

Question (3): Most Community Associations have been charging fees in excess of actual costs to include security deposits, road repair deposits, common area bonds or deposits, etc. Does this mean the Association can no longer require and collect these fees, deposits, etc.?

Response (3): The primary response is that security deposits, road repair deposits, etc. are no longer permitted under the PA Uniformed Planned Community Act. The only exception is for pre-existing deed restrictions or bylaws (prior to February 2, 1997) that specifically permitted the Association to assess and collect those deposits, bonds, etc. Please note that there is no such exception for other Association governing documents, such as Rules and Regulations, Architectural or Building Codes. The exception just covers deed restrictions or bylaws.

In the event your governing documents (prior to 2/97) do permit assessment and collection of such fees, etc., issues of reasonableness still apply.

Question (4): If the Community Association governing documents are silent with regards to the above question, how does the Community Association collect from an owner, builder or contractor when there are actual damages to common areas or neighboring property?

Response (4): Under the PA Uniform Planned Community Act, the Community Association may assess the owner for actual damages. Therefore, the Community Association would detail and support the cost to repair the damaged common property in question and would invoice or assess the owner and/or bidder or caretaker.

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Question (5): Can the Community Association request a full set of building plans from the builder or contractor?

Response (5): Yes, but the Community Association must be sure that its review of the plans only pertains to that permitted under the PA Uniform Planned Community Act. The 2003 International Residential Code preempts communities from conducting reviews or taking responsibility for all *construction* specifications or regulations now governed by the 2003 IRC.

Question (6): If the 2003 Residential Code does not prevent Association's from receiving construction specifications, what are the Community Associations responsible for? Typically, Community Association's Rules and Regulations still cover the following:

- Developing and implementing application and permit process for new construction, exterior alteration, additions
- Establishing review and inspection fees directly related and in support of issuance of permit and associated inspections of Association-controlled restrictions, guidelines, etc.
- Determining and invoicing owner/controller for repair and/or restoration of damaged common area, adjacent property or other Association-controlled property
- Contractor insurance requirements
- Establishing time for review of application and issuing permit
- Establishing on-site construction work hours
- Removal of trees
- Use of heavy equipment (loading & unloading)
- Work-Site Maintenance & Clean-Up
- Placement on-site (set-backs)
- Size, use and location of accessory buildings
- Restatement of necessary municipal building ordinances
- Approved materials and colors (exterior)
- Acceptable dimensional variances
- Fencing (type, location, direction)
- Driveway(s) (finish, location, direction)
- Fuel tanks (location, screening)
- Outdoor swimming pools (location, fencing)
- Exterior lighting
- Security lighting

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- Building (construction) period – completion dates
- Landscape and grounds
- Retaining walls
- Signage (owner, contractor)
- Issuance of permit satisfaction (occupancy permit)

Response (6): You would need to review your governing documents and adopted Architectural Rules and Regulations.

Question (7): You are stating that the Community Association can no longer do or charge for architectural inspections that include foundations, plumbing, electrical, framing, etc.?

Response (7): As indicated earlier the 2003 International Residential Code preempts any community building code that includes similar responsibilities or provisions of the 2003 IRC. Therefore, the Association cannot charge fees to conduct the inspections and such inspections are now to be done by Township-employed or contracted professionals.

Question (8): What is the exact language of the PA Uniform Planned Community Act as it relates to road closings due to freeze-thaw situations?

Response (8): The specific language is as follows:

§ 5218. Easement to Facilitate Completion, Conversion and Expansion

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights. In addition, without affecting the rights, if any, of each unit owner with respect to the use and enjoyment of the common elements, subject to the provisions of the declaration, each unit owner and its agents, contractors and invitees shall have a nonexclusive access easement through the common elements as may be reasonably necessary for the purpose of construction, repair and renovation of the owner's unit. An association shall have the power during **spring thaw conditions to restrict road usage by vehicles of more than ten tons gross weight provided:**

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- (1) such restrictions shall be imposed only on a week-by-week basis for an aggregate period **not to exceed eight weeks** during any calendar year;
- (2) thaw conditions shall be reviewed by the association at least weekly; and
- (3) **signs shall be conspicuously posted** by the association at all entrances to the planned community advising when and where such thaw restrictions are applicable.

An association shall not have the power to impose any fees or charges or require financial security, including, but not limited to, surety bonds, letters of credit or escrow deposits for the use of the easement rights described in this section. An association shall be entitled to recover costs and expenses incurred by the association for the repair of damage caused to common elements in the exercise of the easement rights. However, the declarant or owner who exercises the easement rights described in this section, whether directly or indirectly through an agent, servant, contractor or employee, shall have the obligation to promptly return any portion of the common elements DAMAGED BY THE EXERCISE BY THE DECLARANT OR OWNER OR ITS AGENT, SERVANT, CONTRACTOR OR EMPLOYEE OF THE EASEMENT UNDER THIS SECTION to the appearance, condition and function in which it existed prior to the exercise of the easement, or to reimburse the association for all reasonable costs, fees and expenses incurred by the association to return any portion of the common elements WHICH WERE DAMAGED to the appearance, condition and function in which it existed prior to the exercise of the easement.

Question (9):

It's noted that law sets a maximum of eight (8) weeks per year for road closings due to spring thaw conditions. How are Associations administering this process?

Response (9):

As noted in the Act, signs must be conspicuously posted at all entrances. It has also been recommended that communities and builders/contractors exchange fax numbers and internet addresses to serve notice in advance and to announce discontinuance of closures. We should also note that this is a "spring thaw" condition. Consulting engineers have advised that the fall through freeze should not be of near concern as the spring thaw.

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Therefore, utilizing spring thaw closures in the fall and early December/January is not permitted, and most likely would not have the same preventative effects as do spring closures in late February/March, when true spring thaw conditions exist.

Question (10): What about complying parcel deliveries, moving vans, fuel deliveries, etc.?

Response (10): Community Associations must reasonably permit deliveries to owners' properties. Some communities try to designate special spring routes to be followed if at all possible. Again, it's really a logistic management task, which should be looked into as part of the overall road/traffic program.

Question (11): How do we keep builders/construction from deliberately disobeying the spring thaw notices?

Response (11): Let's educate, communicate and try to work together. If we share contact information well in advance, give notices well in advance, etc., Builders/contractors should have time to plan and adjust schedules, schedule smaller/lighter vehicles, adjust delivery times (ex.. try early morning deliveries while roads are still frozen.)

Question (12): In regards to the inspections necessary under the 2003 IRC, exactly what do they include?

Response (12): Inspections are detailed in Section R-109 of the Code. It reads as follows:

R109.1 Types of Inspections – For on-site construction, from time to time the building official, upon notification from the permit holder or his agent, shall make or cause to be made any necessary inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his or her agent wherein the same fails to comply with this code.

R109.1.1 Foundation Inspection – Inspection of the foundation shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and prior to the placing of concrete. The foundation inspection shall include excavations for thickened slabs intended for the

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support of bearing walls, partitions, structural supports or equipment and special requirements for wood foundations.

R109.1.2 Plumbing, Mechanical, Gas and Electrical Systems Inspection – Rough inspection of plumbing, mechanical, gas and electrical systems shall be made prior to covering or concealment, before fixtures or appliances are set or installed, and prior to framing inspection.

Exception: Ground-source heat pump loop systems tested in accordance with Section M2105.1 shall be permitted to be backfilled prior to inspection.

R109.1.3 Floodplain Inspections – For construction permitted in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, and prior to further vertical construction, the building official shall require submission of a certification, prepared by a registered professional engineer or land surveyor, of the elevation of the lowest floor, including basement, required in Section R327.

R109.1.4 Frame and Masonry Inspection – Inspection of framing and masonry construction shall be made after the roof, masonry, all framing, firestopping, draftstopping and bracing are in place and after the plumbing, mechanical and electrical rough inspections are approved.

R109.1.5 Other Inspections – In addition to the called inspections above, the building department may make or require any other inspections to ascertain compliance with this code and other laws enforced by the building department.

R109.1.5.1 Fire-Resistance-Rated Construction Inspection – Where fire-resistance-rated construction is required between dwelling units or due to location on property, the building official shall require an inspection of such construction after all lathing and/or wallboard is in place, but before any plaster is applied, or before wallboard joints and fasteners are taped and finished.

R109.1.6 Final Inspection – Final inspection shall be made after the permitted work is complete and prior to occupancy.

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R109.2 Inspection Agencies – The building official is authorized to accept reports of approved agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

R109.3 Inspection Requests – It shall be the duty of the person doing the work authorized by a permit to notify the building official that such work is ready for inspection. It shall be the duty of the person requesting any inspections required by this code to provide access to and means for inspection of such work.

R109.4 Approval Required – Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. The building official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the permit holder or an agent of the permit holder wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

Question (13): Most new construction projects or major additions require significant excavation and earth movement. Can Community Associations require a stormwater run-off and soil and erosion plan?

Response (13): There are other state requirements that govern earth disturbance, soil erosion and sedimentation. Some residential construction projects will have to meet these standards, too. Hopefully, townships are requiring the plans to be submitted and we urge you to check with your township to be sure that they are.

Question (14): Can the Community Association require a stormwater and soil/erosion plan for someone who plans on putting in a new driveway or paving a driveway?

Response (14): Yes. The Community Association should draft a regulation containing specifications for submission and review. You would need to retain the services of an engineer to assist.

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Question (15): How does the recent passage of “The Trilogy” affect questions and responses (1) through (14)?

Response (15): The Trilogy Amendments made some additional sections of the UPCA retroactive; they impact the discussion above only very generally. The Trilogy Amendments also made two changes, though, that do affect these questions and answers directly.

1. Declarants and owners now have a clearer duty to repair damage to common area and a duty to reimburse the association if it incurs costs related to the damage. UPCA Section 5218 was amended to add the following language regarding repair of damage to common area:

[T]he declarant or owner who exercises the easement rights described in this section, whether directly or indirectly through and agent, servant, contractor or employee shall have the obligation to promptly return any portion of the common elements damaged by the exercise by the declarant or owner or its agent, servant, contractor or employee of the easement under this section to the appearance, condition and function in which it existed prior to the exercise of the easement, or to reimburse the association for all reasonable costs, fees and expenses incurred by the association to return any portion of the common elements which were damaged to the appearance, condition and function in which it existed prior to the exercise of the easement.

2. The language in UPCA section 5105(c) (that prohibits associations from imposing fees for construction, etc. other than actual direct costs) was amended to prohibit other types of “financial security”, too.

This fact sheet was written by Alan Young, Esquire and James Ott, PCAM, CMCA.