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## Newsletter of the Pa. Association of Zoning Officials

April 2021

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### **Big News! The Zoning Official Is Going Monthly!**

The Pa. Association of Zoning Officials is committed to giving you timely information. Consequently, it has converted The Zoning Official to a digital format and will now email it monthly.

Look for quick bites about trending topics, recent legal decisions, training, and other interesting items.

We would love to hear what you think about the new format, plus any suggestions you may have. Drop us an email at [paazo@psats.org](mailto:paazo@psats.org) or call Editor Brenda Wilt at (717) 763-0930, ext. 123.

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## Latest News

### **Spring PAAZO Educational Forum Goes Virtual on New Dates!**

Although PSATS has canceled its 2021 Educational Conference and Exhibit Show, we are moving forward with many of the workshops, seminars, and forums.

All are going virtual, including the **Spring PAAZO Educational Forum**, which will be held from 9 a.m. to 12:30 p.m. April 23 and 9 a.m. to 11:30 p.m. April 30.

Scheduled topics include:

- Current Trends and Best Practices for Municipal Sign Regulation
- How to Say 'I Do' to Zoning for Event Barns (*and Other Hard-to-Zone Uses*)
- Legal Update and Open Forum
- New Uses and Zoning Regulations: What We Learned From 2020
- Personal Delivery Devices: Is Your Township Prepared?

This forum is eligible for five CZO continuing education credits and/or five PMGA planning/zoning points.



### [New Uses and Zoning Regulations: What We Learned From 2020 \(Virtual\) — 5/5/21](#)

2020 forced many changes in our lives, but with change comes creativity and new ideas. This workshop will encourage participants to consider new uses that have evolved and their impact on townships. The presenters will discuss such trends as zombie kitchens, man caves and she-sheds, emotional support animals, DAS/small cells, short-term rentals, temporary uses, and distribution centers. They will also offer advice on zoning ordinance updates to address these new uses.



### [Grid-Scale Solar Developments in Your Community \(Virtual\) — 5/11/21](#)

Grid-scale solar developments cover 100-plus acres and sell electricity into the transmission grid for use off-site. Technology advances and policy decisions are bringing these projects to more areas of the commonwealth. This workshop focuses on the opportunities and challenges this presents for townships and provides resources to help guide this development.



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## Legal Update

### **PSATS Files Brief in Supreme Court Matter Involving Standard of Review of Zoning Hearing Board Decisions**

On March 29, PSATS filed an *amicus curiae* brief in *Protect PT v. Penn Twp. ZHB*, in which the Pennsylvania Supreme Court will decide whether the Commonwealth Court's opinion upholding a zoning hearing board's grant of special exception approval for an unconventional natural gas developer to construct wells "conflicts with the Court's previous application of the capricious disregard of evidence standard." This decision could have substantial impact on agencies' decision-making documentation requirements and the weight of their credibility determinations moving forward.

### **"Quest for Profitability" Not Enough for Dimensional Variances**

In *Lawrenceville Stakeholders v. City of Pittsburgh Zoning Bd. of Adjustment*, \_\_\_ A.3d \_\_\_, 2021 WL 836777 (Pa.Cmwlth. March 5, 2021), the court upheld the reversal of four dimensional variances initially granted to eliminate side setbacks on an irregularly shaped property zoned for single attached dwellings. The variances would have permitted the developer to build five four-story townhouses. (*The developer testified that building fewer than five townhouses would have resulted in a significant net loss on the project.*) In holding that the evidence presented in support of the variances was insufficient, the court found that to allow the developer's "quest for profitability to fulfill the hardship requirement would mean that any variance applicant could agree to purchase a property at a higher cost than the actual

zoning would warrant and then receive a variance for its proposal that is only necessary to overcome the self-created economic hardship.”

### **Court Strikes Down Ordinance that Delegates Zoning Authority to Adjacent Landowners**

*In Southpointe Golf Club, Inc. v. Board of Supervisors of Cecil Twp.*, \_\_\_ A.3d \_\_\_, 2021 WL 646479 (Pa.Cmwth. Feb. 19, 2021), the court reversed a trial court ruling that: 1) denied a procedural validity challenge to a township’s unified development ordinance; and 2) affirmed the zoning hearing board’s denial of a substantive validity challenge. The court ruled that the township’s ordinance impermissibly placed control in the hands of neighboring landowners to determine whether the board of supervisors will have the option of waiving review standards.

The township’s unified development ordinance originally allowed property owners to change the use of their property in the special development district — which makes up the entirety of the Southpointe development — by applying for a conditional use. A 2016 amendment prevented property owners from changing their uses to less restrictive classifications and listed “community or private membership outdoor recreational facilities” as the most restrictive use.

After the golf club challenged the ordinance, a subsequent amendment provided that the board of supervisors may waive land use standards with the consent of all adjacent landowners, any one of which could withdraw that consent at any time. The golf club argued that the ordinance would amount to impermissible spot zoning. The Commonwealth Court agreed, finding that the ordinance “constitutes an impermissible delegation of zoning authority” because it allows adjacent landowners to trigger the option of the board of supervisors to waive zoning requirements.



Pennsylvania State Association of Township Supervisors

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