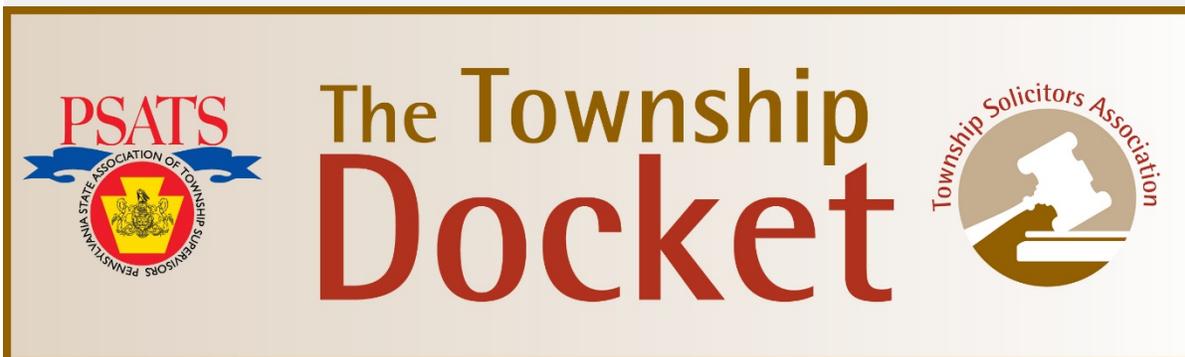


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## Newsletter of the Pennsylvania State Association of Township Solicitors

March 29, 2021

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### Headlines

#### **PSATS Resources Available on the American Rescue Plan Act Funding**

PSATS recently held two virtual town halls during which it reviewed the impact that the \$1.9 trillion American Rescue Plan Act will have on Pennsylvania townships. The sessions covered the timing and distribution of funds to townships, permitted and prohibited uses, and much more. To view the virtual town halls or find out how much the townships you represent will receive in 2021 and 2022, click [here](#).

PSATS will continue to provide updates as additional information, including regulations issued by the Department of Treasury, becomes available.

#### **PSATS Files Brief in Supreme Court Matter Involving Standard of Review of ZHB Decisions**

Today, 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.

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### Recent Decisions

#### **U.S. Supreme Court Rules that Fleeing Suspect Shot by Police Can Make Illegal Seizure Claim**

Last Thursday in *Torres v. Madrid*, \_\_\_ U.S. \_\_\_, 2021 WL \_\_\_\_\_ (March 25, 2021), the U.S. Supreme Court held that the application of physical force to a person with the intent to

restrain is a seizure under the Fourth Amendment even if the person does not submit and is not subdued. In this case, police seeking to execute an arrest warrant approached a woman as she stood near her vehicle. Believing them to be carjackers, the woman attempted to escape. The police fired 13 shots, hitting her twice. She then drove to a hospital 75 miles away and later filed a Section 1983 claim, arguing that the shooting was an unreasonable seizure. Chief Justice Roberts, writing for the five-member majority (Justices Gorsuch, Thomas and Alito dissented; Justice Barrett did not participate), reversed the Tenth Circuit, which had held that a “suspect’s continued flight after being shot by police negates a Fourth Amendment excessive-force claim.”

### **PA Supreme Court OKs Use of ‘Nanny Cam’ Recordings in Children’s Bedrooms**

In *Commonwealth v. Mason*, \_\_\_ A.3d \_\_\_, 2021 WL \_\_\_\_\_ (Pa. March 25, 2021), the Pennsylvania Supreme Court ruled that the Wiretap Act does not preclude the commonwealth from introducing recordings from a “nanny cam” device located in children’s bedrooms as evidence of a nanny’s alleged abuse. The nanny failed to demonstrate a justifiable expectation that her oral communications would not be subject to interception.

The court found that the expectation “that a childcare worker is going to be recorded in their employer’s home is so ubiquitous that we have a name for it” — nanny cams. Thus, there was no reasonable expectation that her oral communications would not be captured by her employers. The court did note that various courts have held that employees have a reasonable expectation of privacy in certain areas of their workplace; here, there was no such expectation.

For those municipal employers that use devices such as “Ring” doorbells to assist with building access, it is likely that an analysis similar to the one used in this case would apply to communications captured on such devices.

### **Junkyard Operator Cannot Use Single Appeal to Preserve Arguments in Six Unconsolidated Cases**

In *Township of Cranberry v. Spencer*, \_\_\_ A.3d \_\_\_, 2021 WL \_\_\_\_\_ (Pa. Cmwlth. March 24, 2021), the court quashed five of six appeals from zoning enforcement notices because a property owner failed to file notices of appeal for each. In the sixth, it upheld the fines imposed for operating a junkyard in violation of the township ordinances. To read more, click [here](#).

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## **Upcoming Educational Offerings**

### **[New Developments in Police Liability – Guidance to Evaluate Your Police Department – 4/9/21 Virtual Class \(2 CLE\)](#)**

Chris Gerber of Siana Law and Capt. Ashley Heiberger (Ret.) will address new developments in police liability with a practical approach that allows for an immediate assessment of your police department’s compliance with federal and state law. They will cover administrative and operational aspects of policing with a focus on how to reduce liability exposure and improve the delivery of police services to your community. Among the topics to be covered include 1) Who’s Really in Charge of Your Police Department; 2) When Officers Engage in Deceitful Behavior; 3) Police and Social Media; 4) Police Department Assessment Checklists; 5) High-Risk Critical Tasks (the 12 basic police functions that generate the most litigation issues); and 6) Police Policy, Training, Supervision, and Use of Force.

### **[Cable Franchising 101 – 4/14/21 Webinar \(1 CLE\)](#)**

This webinar is designed for township officials who are not familiar with the intricacies of cable franchising. It is a primer for understanding municipal rights with respect to cable/internet companies. What are franchise fees and how are they calculated? Can we increase our franchise fee revenue? How can we get cable/internet service to unserved areas? Can we improve our broadband service through a franchise agreement? What is a PEG channel? The webinar will address these and other important questions.

**[Spring Solicitors Seminar – 4/19/21 \(5 CLE\)](#)**

This seminar will cover a wide variety of emerging and important trends and issues vital to the practice of every municipal solicitor. Don't miss this opportunity to hear from experts and network with your peers from around the state. Topics include risk management on construction projects, top misconceptions about public sector HR/labor law, and municipal tort liability.

**[PAAZO Spring Virtual Educational Forum \(Zoning\) – 4/23 & 4/30 Virtual Seminar \(5 CLE\)](#)**

This two-day virtual program explores issues that zoning officers and planning and zoning officials face on a regular basis and discusses effective strategies to address them. Topics include new uses and zoning regulations, personal delivery devices, and trends in municipal sign regulation.

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This biweekly newsletter for members of the Pennsylvania State Association of Township Solicitors is intended to focus on news and matters of interest to solicitors, share case updates in a timely manner, and provide details about upcoming training opportunities. Email comments and suggestions to Scott Coburn at [scoburn@psats.org](mailto:scoburn@psats.org).



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