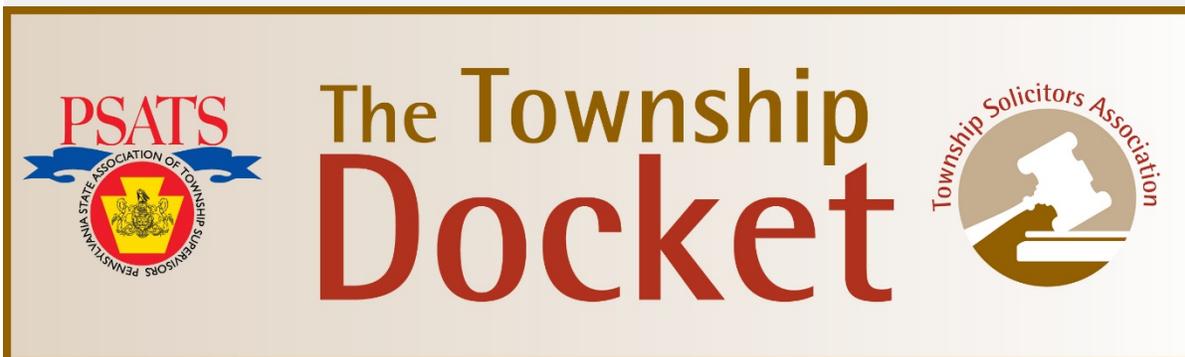


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## Newsletter of the Pennsylvania State Association of Township Solicitors

June 21, 2021

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### Headlines

#### **General Assembly Adopts Resolution Ending COVID-19 Disaster Emergency**

As you have likely seen or heard, the Pennsylvania General Assembly recently adopted House Resolution 106, which terminated the COVID-19 disaster emergency declaration issued by Gov. Wolf. With the termination of the disaster emergency, the virtual meetings provisions in Act 15 of 2020 expire, and townships must revert to pre-Act 15 meeting requirements. Note that Act 15 also modified Section 7301(d) of the Emergency Services Code to permit municipalities acting under their own local disaster emergency declarations to have a quorum attend meetings through authorized telecommunications devices. That language remains in effect and is not impacted by the General Assembly's resolution.

#### **PSATS Pens Op-ed on Need for Legal Advertising Reform**

PSATS Executive Director Dave Sanko released a statewide op-ed giving voice to member concerns about the need for legal advertising reform. He argued that because of declining newspaper circulation, newspaper advertisements are no longer the most effective way to provide public notice to residents. Instead, the time and expense required could be better spent on more timely methods that taxpayers have a better chance of seeing. HB 955 would give local governments in Pennsylvania the option to place notices in more places and with greater access to their constituents, thus enhancing transparency and information sharing. To read the op-ed, [click here](#).

#### **Pennsylvania Supreme Court to Hear Dimensional Variance Dispute**

Last week, the Pennsylvania Supreme Court granted a petition for allowance of appeal in *Kneebone v. Zoning Hearing Bd. of Twp. of Plainfield*, No. 498 MAP 2020, where the Commonwealth Court ruled that a zoning hearing board erred in granting a dimensional variance from the township's setback requirements in part because "[c]oupling a small lot with an owner's preference for a deck larger than what local zoning permits does not transform a small lot into one burdened by a hardship." The homeowners contend that the Commonwealth Court improperly substituted its judgment for that of the trial court and zoning hearing board.

#### **U.S. Supreme Court Emphasizes Need to Couple IT Safeguards with Written Policies**

In a recent blog post, Devin Chwastyk and Frank Lavery II of McNees Wallace & Nurick, sponsor

of the Township Solicitors Association, wrote about a recent U.S. Supreme Court decision in *Van Buren v. United States*, which clarified the scope of the Computer Fraud and Abuse Act. They also provided numerous best practices that organizations can implement to better protect their information. To read the full blog post, [click here](#).

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## Recent Decisions

### **EHB Proper Forum for Township Appeal of DEP Pipeline Approval**

In *West Rockhill Township v. Pennsylvania Dept. of Environmental Protection*, No. 1595 C.D. 2020, and *Cole v. Pennsylvania Dept. of Environmental Protection*, \_\_\_ A.3d \_\_\_, 2021 WL \_\_\_\_\_ (Pa.Cmwlt. June 15, 2021), the Commonwealth Court concluded that Section 717(d)(1) of the federal Natural Gas Act does not divest the Pennsylvania Environmental Hearing Board (EHB) of jurisdiction to hear a township's (and residents') challenge to DEP's approval of a natural gas compressor station in the township as part of the Adelpia Gateway Project.

Writing for the court, President Judge P. Kevin Brobson rejected the argument of Adelpia Gateway, LLC, that any challenge to DEP's approval falls within the original jurisdiction of the U.S. Court of Appeals for the Third Circuit. The court found that a statutory appeal to the EHB is not a "civil action," as that term is used in Section 717(d)(1), for which the Third Circuit has jurisdiction because the EHB is a "not a court of law or of equity." Instead, the EHB is a "creature of statute, charged with performing the agency adjudicative function with respect to certain DEP actions." Therefore, the court held, state administrative agency reviews of state permitting decisions "remain available, if desired, and are not preempted by the federal jurisdictional statute." As a result, the EHB erred when it dismissed the appeals from DEP's approval of the natural gas compressor station.

Judge J. Andrew Crompton concurred, noting that the Third Circuit has a body of case law on this issue and that "[w]ithout certainty as to the appropriate jurisdiction for pipeline-related permitting appeals, parties will be forced to engage in guesswork as to the proper litigation pathway" and will thus experience delays in receiving substantive decisions.

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## Legislative & Policy

### **Senate Passes 'No Bids Received' Legislation**

Last week, Pennsylvania's Senate unanimously passed SB 478, which would create a process for municipalities to enter contracts for services after advertising twice for bids but receiving none. SB 478 would require that such contracts be disclosed at an advertised public meeting.

PSATS supports this legislation and will continue to work with members of the House to get this bill to the governor's desk and signed into law. SB 478 is now before the House Local Government Committee.

### **Small Cell Wireless and Rights-of-Way Bills Introduced in House, Senate**

Two bills were introduced last week in the House (HB 1621) and Senate (SB 769) that will, if

enacted, provide clarity on the placement of small wireless facilities in municipal rights-of-way, including height restrictions, collocation requirements, and limitations on the amount of fees that municipalities may charge.

This legislation would authorize municipalities to charge an annual fee for the use of their rights-of-way not exceeding \$270 per small wireless facility or \$270 per new utility pole with a small wireless facility and would set the maximum permitted height of poles and small cell facilities at 50 feet. HB 1621, which has already been approved by the House Consumer Affairs Committee and referred to the full House, would also require small cell operators to comply with restrictions in place in underground utility districts and allow municipalities to develop reasonable design guidelines to minimize aesthetic impacts. Municipalities would have 60 days to review applications for collocation on preexisting structures and 90 days to review applications for the installation of new structures with attached small wireless facilities.

As currently written, HB 1621 would only apply to small cell wireless facilities and poles within the right-of-way; zoning and other local ordinances are to be preserved.

### **Senate Passes Special Permit Bill**

Last Wednesday, the Senate passed HB 765, which would prohibit PennDOT from requiring municipalities to indemnify it for special events taking place on state roads when the event host or permit holder has already indemnified PennDOT. HB 765 has passed the House and the Senate and will be presented to the governor.

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## **Upcoming Educational Offerings**

### **[PSATS Regional Forums \(In-Person\) - Various Dates](#)**

These Regional Forums will be PSATS' first major return to in-person educational events and will offer a variety of CLE opportunities. The first two will take place July 20 in Erie and July 28 in the Lehigh Valley. For more information, go to [www.psats.org/psats-regional-forums](http://www.psats.org/psats-regional-forums).

### **[In the Hot Seat – Handling Tough Situations as the Chair of the Board \(Webinar\) – 7/22/21](#)**

**NOTE: This would be a great share with your township and ZHB chairs!**

Whether you have been the chair of your township board for a long time or are new to the game, many situations occur during township meetings that require the chair to resolve them in an effective manner. This includes addressing challenging residents during public comment, disagreements between board members, and the complexities of working through parliamentary procedure issues during difficult votes. In this virtual class, you will learn best practices for tackling these situations and making yourself a better board chair.

### **[2021 PSATS HR & Labor Management Institute – 9/23-9/24/21 \(8 CLE\)](#)**

This 1.5-day class is a must-attend for anyone who has responsibility for HR and personnel management in their township.

### **2021 Solicitors Fall Seminar**

PSATS will be holding three in-person Solicitors Seminars this fall. Register at the links below:

**[West – Courtyard Marriott, Cranberry Township, Butler County - 9/28 \(5 CLE\)](#)**

**[Central - PSATS, Cumberland County - 10/7 \(5 CLE\)](#)**

[East - Holiday Inn, Lansdale-Hatfield, Montgomery County - 11/4 \(5 CLE\)](#)



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Comments and suggestions about this biweekly newsletter for members of the Pennsylvania State Association of Township Solicitors can be emailed to Scott Coburn at [scoburn@psats.org](mailto:scoburn@psats.org).



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