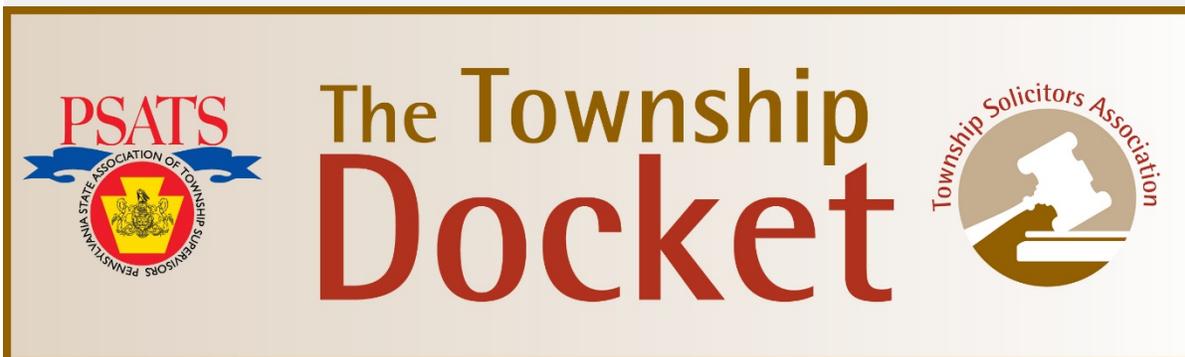


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Newsletter of the Pennsylvania State Association of Township Solicitors

July 19, 2021

Headlines

Township Warning on Unemployment Fraud; Overcharging of Unemployed Found

Rampant problems continue to plague the computer system used by the Department of Labor & Industry's Unemployment Fund. PSATS encourages solicitors to work with their township clients to closely monitor and respond quickly to potentially fraudulent claims that ultimately will be charged against the township and taxpayers. *(As an aside, there have been several fraudulent claims discovered that were filed on behalf of active, employed PSATS staffers.)*

Spotlight PA, a media watchdog group, also reported last week the following unemployment-related issue: "Democratic Gov. Tom Wolf's administration completed its internal investigation into a multimillion-dollar unemployment mistake in mid-2017 but failed to make the findings public until this week, according to newly released documents." In response to questions by Spotlight PA, [the Office of Inspector General late Tuesday released a one-page summary of its inquiry into a state error](#) that resulted in "thousands of unemployed Pennsylvanians being overcharged millions in interest payments over a decade."

Be a Part of PSATS' Centennial Book!

PSATS turned 100 years old in May and is producing a commemorative centennial book that will take an in-depth look at PSATS' history. It will include lots of photos and interviews with those who helped to accomplish many great things on behalf of the state's 1,454 townships of the second class.

PSATS is inviting solicitors to be a part of this historical book by purchasing an ad. There are three options for ad sizes, and PSATS will even design the ad for you. Reserve your ad through an easy online process at www.psats.org/centennial-book-ad-sales/. The deadline for ad purchases is **July 21**. For more information, contact Ginni Linn at (717) 763-0930, ext. 127, or glinn@psats.org.

Recent Decisions

Environmental Site Assessment Exempted from RTKL Disclosure Due to Voidable Sales Agreement

In *Mountz v. Columbia Borough*, ___ A.3d ___, 2021 WL _____ (Pa.Cmwth. July 13, 2021), the Commonwealth Court held that an environmental site assessment report was exempt from disclosure under Section 708(b)(22)(i) of the Right-to-Know Law – which exempts certain real property-related documents – because the report related to the borough’s due diligence during a possible real property acquisition. In reaching that conclusion, the court rejected the requester’s argument that the exemption should not apply because the borough had signed a sales agreement to purchase the property in question (the borough later voided the agreement).

The Office of Open Records ordered the disclosure of the reports, finding that the exemption turned on whether the borough had decided to “proceed” with the purchase of the property. The trial court reversed, agreeing with the borough that the execution of the sales agreement and payment of a refundable deposit did not manifest a decision to proceed with the purchase.

The Commonwealth Court agreed with the trial court and held that the “government may take steps to ensure that upon receiving satisfactory environmental reviews, its ‘decision . . . to proceed with the . . . acquisition . . . of real property’ will be enforceable” and that the purchase need not be finalized. Instead, for the exemption to be inapplicable, “the parties must be past the point in time that the sales agreement can be voided without penalty to the buyer.”

No Standing for Participant Township Due to Failure to Properly Intervene

In *Horizon House, Inc. v. East Norriton Twp. Zoning Hearing Bd.*, Nos. 1027 and 1048 C.D. 2020, 2021 WL 2833030 (Pa.Cmwth. July 8, 2021), the court ruled that a township did not have standing to participate in an appeal because it failed to properly intervene – despite its active participation before the zoning hearing board and trial court.

The zoning hearing board heard the appeal as to whether Horizon House’s application for a use and occupancy permit for a home for two disabled individuals should be granted. The township presented witness testimony and other evidence and cross-examined a witness. Before the trial court, the township’s attorney entered his appearance on behalf of the township, but the township never requested or received intervenor status. As a result, the township failed to comply with Section 1004-A of the Municipalities Planning Code and the court quashed the township’s appeal.

However, the court also determined that the township, through its zoning officer, is the entity that may issue use and occupancy permits. The zoning hearing board could consider appeals from the issuance of such permits or direct the township to take certain actions but is not authorized by law to issue the permits itself. Therefore, the trial court erred in commanding the zoning hearing board to issue the use and occupancy permit.

Township’s Tentative Approval of PRD Thrown Out

In *Gouwens v. Indiana Twp. Bd. of Supervisors*, Nos. 544, 992-994 C.D. 2020, 2021 WL 2833034 (Pa.Cmwth. July 8, 2021), the court reversed a township’s grant of tentative approval for a planned residential development (PRD) because the PRD failed to comply with the township’s zoning ordinance requirements for 1) variety of units, 2) open space, and 3) internal traffic circulation.

The PRD plan called for almost 100 townhomes to be built using three different designs and 60% of the total acreage to be set aside as open space, which greatly exceeded the township’s 20% requirement. However, objectors challenged that much of that open space was for stormwater management purposes and not “designed and intended for the use or enjoyment of residents” as spelled out in the township’s ordinance. The board of supervisors gave its tentative approval, but

the Commonwealth Court reversed, finding that the board's decision was not specific enough, and remanded back to the board. On remand, the board issued a revised decision, which was again appealed.

With the matter again before it, the Commonwealth Court reviewed and took issue with several aspects of the board's decision. First, the court found that the zoning ordinance required that PRDs "create variety in the type, design and arrangement of housing units" and that three types of units was not enough. In reaching that decision, the court found that the board's "revised decision now attempts to avoid the plain language of Section 400 [of the township ordinance] by downplaying the Plan's lack of variety of types of housing units and highlighting its 'design and arrangement' of houses as unique to the Township as a whole."

As for the open space issue, the court found that the percentage of the PRD's acreage dedicated to stormwater management could not be counted toward the ordinance's 20% requirement and that there was insufficient evidence as to whether the portion left was for the "use or enjoyment" of the residents. Therefore, the board's approval of the plan was an abuse of discretion.

The court also rejected, due to unresolved safety issues, the approval of a cul-de-sac that would be more than twice the length of what is permitted in the township's cul-de-sac ordinance.

Legislative & Policy

Town Hall Provides Update on New Laws and Upcoming Legislation

PSATS recently hosted a Town Hall that provided an update on new laws enacted before the General Assembly left Harrisburg for the summer and a preview of the legislature's potential fall plans. These include amendments to the Sunshine Act that require townships, as well as their boards and commissions, to create and post agendas in advance of public meetings and limit their ability to take official action on matters that are not included in the agenda. To access the Town Hall on demand, [click here](#).

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 five will take place this summer: July 20 in the Northwest region (Erie), July 28 in the Lehigh Valley (Breinigsville), August 5 in the Northcentral region (Williamsport), August 17 in the Southcentral region (Grantville), and August 24 in the Southwest region (Canonsburg). For more information, go to 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 \(5 CLE\)](#)



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.



Pennsylvania State Association of Township Supervisors

David M. Sanko, Executive Director

4855 Woodland Drive
Enola, PA 17025



