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## Newsletter of the Pa. Association of Zoning Officials

July 2021

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### Latest News

#### **Changes to Sunshine Act Will Impact ZHB Meetings**

Governor Wolf recently signed into law Senate Bill 554 (*now Act 65 of 2021*), which amended the Sunshine Act and will change the way that townships — and their various boards, commissions, and committees — conduct business relating to public meetings. Act 65 requires that all agencies that are subject to the Sunshine Act post an agenda at least 24 hours before any public meeting at the township building or the building where the meeting will take place, as well as on the township's website, if it has one. Subject to limited exceptions, agencies will not be able to take official action on an item unless it is on the agenda. One of those exceptions is if the board approves adding the item to the agenda at a public meeting and then posts an updated agenda within 24 hours after that meeting.

PSATS encourages zoning officers to work with their township managers and/or secretaries and zoning hearing board members to make sure that everyone is aware of the new agenda requirements and make any necessary updates to policies and procedures before the law takes effect on August 29, 2021.

#### **Pennsylvania Enacts New 5G Wireless Law**

Pennsylvania has a new law regulating the use of small wireless facilities in municipal rights of way. Act 50 of 2021 (*formerly House Bill 1621*) authorizes municipalities to charge an annual fee for the use of their rights of way. Small wireless facilities will now be permitted uses in all rights of way, except in underground utility districts, and municipalities may develop reasonable design guidelines to minimize their aesthetic impact. Municipalities will have 60 days to review applications for collocation of small wireless facilities on existing structures and 90 days to review applications for the installation of new poles with small wireless facilities attached. PSATS is working on a model ordinance for its members' use.

#### **PSATS Is Looking for Speakers at Upcoming Events**

If you are interested in presenting to an audience of your fellow zoning officials or other township officials and staff at an upcoming PSATS in-person event or webinar, please contact Kathy Kronicz at [kkronicz@psats.org](mailto:kkronicz@psats.org).

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## Training Opportunities

### [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 zoning hearing board chairs!**

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



### **PAAZO Fall Seminars**

The agendas for these events are being built out and will be sent to PAAZO members once finalized. In the meantime, here are the dates and registration information:

- [October 19, 2021 \(PSATS, Cumberland County\)](#)
- [October 21, 2021 \(Monroeville, Allegheny County\)](#)
- [November 9, 2021 \(Exton, Chester County\)](#)



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## Legal Update

### **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.Cmwlth. 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 variety of units, open space, and internal traffic circulation.

The PRD plan called for nearly 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 the approval of a cul-de-sac that would be more than twice as long as that permitted in the township's cul-de-sac ordinance due to unresolved safety issues.

### **Township Has No Standing Due to Failure to Properly Intervene; ZOs, not ZHBs, to Issue Use and Occupancy Permits**

In *Horizon House, Inc. v. East Norriton Twp. Zoning Hearing Bd.*, Nos. 1027 and 1048 C.D. 2020, 2021 WL 2833030 (Pa.Cmwlth. 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.

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## **Legislative Report**

PSATS recently hosted a Town Hall in which it provided an update on new laws enacted before the General Assembly left Harrisburg for the summer, as well as a preview of the General Assembly's potential fall plans. These include the amendments to the Sunshine Act and new 5G/right-of-way law referenced in the headlines above. To access the Town Hall on demand, [click here](#).

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If you have any suggestions or topics for this newsletter, email [paazo@psats.org](mailto:paazo@psats.org) or call Editor Brenda Wilt at (717) 763-0930, ext. 123, or PAAZO Program Manager Kathy Kronicz at (717) 763-0930, ext. 154.



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