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## Newsletter of the Pa. Association of Zoning Officials

May 2021

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### **The Zoning Official Is Now Monthly!**

The Pennsylvania Association of Zoning Officials is committed to giving you timely information. Consequently, it has converted *The Zoning Official* to a digital format that will be emailed 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**

### **Mark Your Calendar for the PAAZO Fall Seminars**

Although the PAAZO Virtual Spring Seminar is still in the rearview mirror, plans are already underway for the PAAZO Fall Seminars, which will return to live, in-person sessions in several locations.

Here are the dates and locations:

- **Oct. 19** — Enola, Cumberland Co. — PSATS Education Center
- **Oct. 21** — Monroeville, Allegheny Co. — Doubletree Hotel Pittsburgh/Monroeville
- **Nov. 9** — Exton, Chester Co. — Hilton Garden Inn Exton

To register for the session of your choice, go to [learn.psats.org](http://learn.psats.org) and choose Seminars.

If you have ideas for topics you would like to see discussed at the PAAZO Fall Seminars, please contact PAAZO Manager Kathy Kronicz at (717) 763-0930, ext. 154, or [kkronicz@psats.org](mailto:kkronicz@psats.org).

### **House Local Government Committee Approves Land Use Bill**

On May 5, the House Local Government Committee approved HB 141, which would mandate that all zoning ordinances contain a non-building waiver provision. This legislation would enable a

property owner to create a non-building lot that would be exempt from the normal provisions of a subdivision. HB 141 is now before the House. PSATS opposes HB 141 as currently written and will continue to work with members of the General Assembly on this proposal.

## **You Can't Do That in Pennsylvania! Or Can You? Planning Commissions Approve Subdivision/Land Development Plans**

By Christopher Knarr / McNees Wallace & Nurick LLC

If I told you that, in Pennsylvania, municipal (*including county*) planning agencies, such as planning commissions or planning department staff, are permitted to act on subdivision or land development (SLD) plans and related waivers or modifications, most of you would likely say that I'm wrong, crazy, or flat out lying! Most of you would say that planning agencies are to review and make recommendations on SLD plans, and that governing bodies (*e.g., councils, supervisors, or commissioners*) take action to approve or deny SLD plans and waivers or modifications. Well, most of you would be right, but only partially.

While Sections 501 (*Grant of Power*), 503.(8) (*Contents of Subdivision and Land Development Ordinance*), 508 (*Approval of Plats*), and 512.1 (*Modifications*) of the Municipalities Planning Code state that governing bodies have the authority to act on SLD plans and waivers or modifications, those same sections state expressly that governing bodies may delegate that authority to their planning agencies. [READ MORE ...](#)

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## **Training Opportunities**

### **Miss Attending the PSATS Annual Conference? Try One of Our In-Person Regional Forums**

Enjoy a general session, speakers, and conference-level workshops at one of seven Regional Forums being held across Pennsylvania beginning in July. Learn about issues that impact your region, earn PMGA and professional credits, and discuss common interests with other local leaders. Click [HERE](#) for dates, locations, and other details.



### **PSATS Offers Approximately 60 Virtual Conference Workshops for Just \$99**

PSATS has converted nearly all the workshops that would have been held at the Annual Conference in Hershey into virtual workshops. For one payment of \$99, you can access all the workshops live or recorded. For more information or to purchase the PSATS Virtual Conference Workshop Pass, click [HERE](#).



## [Planning for Land Use and Freight \(Webinar\) - 5/26/21](#)

With e-commerce generating more distribution and fulfillment centers and delivery to nearly every property, the scope and importance of planning for land use and freight has greatly expanded. Considerations range from downtown deliveries to intersection turning radii, and from industrial park access to truck parking. Presenters will demonstrate how land use and transportation planning can better accommodate the movement of goods from production to consumer.



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## Legal Update

### **Zoning Ordinance Invalidated Due to Insufficient Ad Notice**

In *Yannacone v. Lewis Twp. Bd. of Supervisors*, No. 856 C.D. 2020, 2021 WL 1714218 (Pa.Cmwlth. April 30, 2021), the court affirmed the grant of summary judgment in favor of a township resident on the basis that the township failed to comply with the advertising requirements in Section 610(a) of the Municipalities Planning Code.

The advertisement for the 150-page ordinance stated that it was “amending comprehensive zoning within the township, repealing inconsistent ordinances and providing for an effective date” and included that the full text of the ordinance was available for public inspection at the township building. The court stated that it was “perplexed as to how the above-quoted Notice can be considered as containing ‘the title and a brief summary ... setting forth all the provisions in reasonable detail’ ” as required by Section 610.

### **Court Quashes Appeal from Order that Township Lacked Authority to Require Reimbursement of PRD Consulting Fees Because All Claims Not Resolved**

In *Arcadia at Newtown Holdings, LP v. Township of Newtown*, 469 C.D. 2019, 2021 WL 1259423 (Pa.Cmwlth. April 6, 2021), the Commonwealth Court quashed a township’s appeal from an order declaring that the township lacked authority under the Municipalities Planning Code to require a developer to reimburse the township for the consulting fees the township incurred when reviewing the developer’s planned residential development application. Because the trial court did not dispose of the township’s counterclaim that the developer owed it reasonable fees under a professional services agreement, but instead appointed a referee to determine the reasonableness of all charges due the township for its review, the order was interlocutory and not appealable.

### **Commonwealth Court Upholds Dismissal of Land Use Appeals for Failure to File Briefs Pursuant to Local Rule**

In *Kesarkar v. Birmingham Twp.*, No. 428 C.D. 2020, 2021 WL 1259426 (Pa.Cmwlth. April 6, 2021), the Commonwealth Court affirmed the dismissal of numerous land use appeals because of the appellants’ failure to comply with the local rule and file supporting briefs before the trial court. This came after the appellants took action to challenge a preliminary/final minor subdivision plan application more than a year after it was filed.

The court rejected the appellants’ argument that dismissal would violate Rule 5002(g) of the Pennsylvania Rules of Judicial Administration, which provides that no case shall be dismissed because of failure to initially comply with a local rule. The court found that the combination of the trial court’s order scheduling argument on the motion to dismiss, the substance of the motion, and the length of time before the argument was scheduled “undoubtedly” put the appellants on notice that they had not abided by the local rule and gave them sufficient time to correct their mistake.

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

In *Township of Cranberry v. Spencer*, \_\_\_ A.3d \_\_\_, 2021 WL 1116291 (Pa.Cmwlt. 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.

In this case, the latest episode in a long-running dispute between the township and the property owner, five of the enforcement notices issued by the township to Spencer were for operating junkyards in a zoning district where they were not permitted. The sixth was for having more junked or abandoned vehicles than allowed by the township's property maintenance code. [READ MORE ...](#)



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