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## Newsletter of the Township Engineers Association

April 2022

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### Latest News

#### **Register Today for PSATS' 2022 Annual Conference**

If you have not yet registered for an exhibit booth at our upcoming conference at the Hershey Lodge from April 24-27, do so today because the outdoor spaces are already "sold out" and very few indoor spaces remain! To register to exhibit, go to [conference.psats.org](https://conference.psats.org), click on the red "Register Here" button, and then choose the blue "Exhibitor" button.

#### **Reminder: DCED Accepting Applications for Act 13 Grants until May 31**

The state Department of Community and Economic Development (DCED) is accepting applications for Act 13 grants until **May 31**. Grant programs funded with impact fees from natural gas wells under Act 13 of 2012 include:

[Abandoned Mine Drainage \(AMD\) Abatement & Treatment Program](#): Townships may apply for grants to reclaim abandoned mine wells, remediate and repair existing AMD project sites, and monitor water quality to track nonpoint source load reductions from AMD remediation projects.

[Baseline Water Quality Data Program](#): Townships may apply for grants to establish baseline water quality data on private water supplies using the Baseline Water Quality Data program.

[Flood Mitigation Program](#): Townships may apply for grants to perform flood mitigation projects.

[Greenways, Trails, and Recreation Program](#): Townships may apply for funding to plan, acquire, develop, rehabilitate, and repair greenways, recreational trails, open space, parks, and beautification projects.

[Orphan or Abandoned Well Plugging Program](#): Townships may apply for grants to clean out and plug abandoned and orphan oil and gas wells, stray gas mitigation systems, and well venting projects.

[Sewage Facilities Program](#): Townships may apply for grants for costs associated with the planning work required under Act 537, the Pennsylvania Sewage Facilities Act.

[Watershed Restoration and Protection Program](#): Townships may apply for grants to construct, expand, repair, maintain, or rehabilitate new or existing watershed protection best management practices.

### **Chesapeake Bay Program Newsletter Is Resource for Local Governments**

*Watershed Currents*, a bi-monthly curated newsletter from the Chesapeake Bay Program, highlights local case studies and provides inspirational and informative resources for local governments and interested parties in the Chesapeake Bay watershed. Each newsletter is theme-focused and organized by local priorities impacting local government communities today. The March 2022 edition focuses on stormwater, including successful projects, education, and related studies, and is available [HERE](#). To read past editions and subscribe, click [HERE](#) and scroll down to the “Scope and Purpose” section.

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## **Legal Update**

### **Are Non-Possessory Contractors Liable for Known Dangerous Conditions?**

The Pennsylvania Supreme Court agreed last week to hear an appeal from the Commonwealth Court’s decision in *Brown v. City of Oil City*, No. 292 WAL 2021, where that court held that a contractor could be found liable for the dangerous condition of steps that it built for a city-owned library even if the city had accepted the contractor’s work and was aware of the allegedly defective nature of the steps.

### **Control Over Authorities**

In *County of Delaware v. Delaware County Regional Water Quality Control Authority*, \_\_\_ A.3d \_\_\_, 2022 WL 619580 (Pa.Cmwth. March 3, 2022), the court ruled that a municipality retains statutory authority under the Municipality Authorities Act to dissolve and/or obtain an authority after the authority enters into a contract to sell its assets but before complete performance of that contract has occurred.

In this case, DELCORA, an authority created by the county, agreed to sell its assets to Aqua. The county countered that act by adopting an ordinance directing the authority to wind up its affairs. DELCORA argued that the county, by enacting the ordinance, was intentionally interfering with the contract between it and Aqua and that the contract should proceed.

The Commonwealth Court disagreed with DELCORA and found that the county ordinance was enforceable “to the extent it directs the termination/dissolution of DELCORA and dictates that, after termination/dissolution is underway, DELCORA must engage in conduct necessary to effectuate the transfer of its assets and the assumption of its liabilities/obligation by the County.” It also found, reading Sections 5622(a) and 5607(d)(4) and (13) of the Municipality Authorities Act together, that a “municipality may invoke its power under section 5622(a) to demand that the authority terminate and/or convey its assets to the municipality at any time prior to the complete performance of that contract.”

### **Court Tosses Township Settlement Agreement for Lack of Court Approval**

In *Murray v. Shaler Twp. Zoning Hearing Bd.*, No. 966 C.D. 2021, 2022 WL 761567 (Pa.Cmwth. March 14, 2022), the court ruled that a settlement agreement allowing six unrelated individuals to live in a single dwelling when the township’s zoning ordinance permitted only three unrelated residents was not enforceable without court approval because it circumvented the township’s zoning ordinance and the Municipalities Planning Code.

The applicant filed an application with the zoning hearing board (ZHB) to operate a residential

home for up to eight unrelated individuals who have suffered brain injuries. Alternatively, they sought reasonable accommodation for the proposed use. The ZHB denied the application and the applicant filed an action against the township and ZHB in federal court. The township and applicant settled, with the township allowing up to six unrelated individuals to live at the property. The applicant withdrew the prior application and submitted a new one, which the zoning officer granted.

There was a question as to whether the settlement agreement was enforceable because the ZHB did not approve it. The court found that because the president of the board of commissioners signed the agreement on behalf of the township and the ZHB, the ZHB was bound by the agreement to the extent that it was valid.

As for the validity of the settlement agreement, the court found that it memorialized the township's concession to grant a zoning certificate without regard to the restrictions in that zoning district, as well as other specifications, including the zoning officer's review and inspection. It also found that the "Township disregarded the Zoning Officer's duty to grant zoning certificates in accordance with the Ordinance's clear language." It also found that the "Township impermissibly bypassed the Board's legislative power and granted an Ordinance amendment, and/or disregarded the ZHB's variance process." Without court approval, the court found, such a significant deviation from the township's ordinance was unenforceable.

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## Legislative Report

The following is an updated summary of legislation affecting townships that is under consideration by the General Assembly. Please note that the status of these bills may have changed.

### **Automated vehicles**

[HB 2398/PN 2819](#) would further regulate highly automated vehicles and establish a Highly Automated Vehicle Advisory Committee.

**Status:** Before the House Transportation Committee.

### **Joint purchases**

[HB 1839/PN 2085](#) allows a municipality, by ordinance or resolution, to enter into a joint agreement with a community association for the joint purchases of materials, supplies and equipment or any other lawful purpose such as construction, repair or maintenance of public and private streets, real property, and stormwater facilities or utilities. The ordinance or resolution shall require that the community association shall be bound by the terms and conditions of purchasing agreements which the local government prescribes, and that the community association be responsible for payment directly to the vendor under each purchase contract.

**Status:** Before the House.

### **Skill video gaming**

[HB 2133/PN 2478](#) will regulate skill video game systems by providing for the issuance of licenses for skill video gaming, imposing a tax and criminal and civil penalties, and providing for municipal zoning.

**Status:** Before the House Gaming Oversight Committee.

### **Medical marijuana growers**

[HB 2035/PN 2345](#) would allow "farmer-growers" to grow, process, or dispense medical marijuana and would require that they meet the same municipal zoning and land use requirements as other manufacturing, processing, and production facilities located in the same zoning district.

**Status:** Before the House Health Committee.

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## Upcoming Educational Opportunities *(many PDH eligible)*

## **Calling All Subject Matter Experts!**

PSATS continues to host numerous in-person and virtual educational events targeted at both township engineers and municipal officials as detailed below. If you are interested in sharing your expertise for an in-person or virtual presentation on any topic of interest to our audience, please contact Education Director Scott Coburn at [scoburn@psats.org](mailto:scoburn@psats.org).

## **In-Person Classes**

### **[2022 Engineers Spring Seminar - 4/25 & 4/26, 2022](#)**

The 2022 Engineers Spring Seminar is right round the corner, so make sure you sign up to attend! This in-person event will be held the mornings of April 25 & 26, 2022, at the Hershey Lodge concurrently with the PSATS Annual Conference. Attendees can receive up to three professional development hours (PDHs) per day as indicated by the agenda below, which is subject to change. Click on the link above to register.

Monday, April 25 (Day 1 – 3 PDHs)

8:30 a.m. DEP State Water Plan Update (1 PDH)

9:30 a.m. Elevate Your Municipality while Lowering Your Costs by Integrating Drone Technology (1 PDH)

10:30 a.m. PennDOT's Long-Range Transportation Plan (1 PDH)

11:30 a.m. Adjourn

Tuesday, April 26 (Day 2 – 3 PDHs)

8:30 a.m. Traffic Safety Trends (1 PDH)

9:30 a.m. Flexible Base Paving and Ultra-thin Bonded Wearing Courses (0.75 PDH)

10:15 a.m. A Cloud-based Stormwater BMP Management Software (0.5 PDH)

10:45 a.m. What's HOT with Asphalt Pavements! (0.75 PDH)

11:30 a.m. Adjourn

### **[2022 PAAZO Spring Educational Forum - 4/24/22](#)**

This educational forum explores issues that zoning officers and planning and zoning officials face on a regular basis and discusses effective strategies to address them. Attendees are eligible to receive five continuing education credits toward their Certified Zoning Officer designation and/or five PMGA Planning/Zoning points.

## **PowerPass-Eligible Webinars**

### **[Webinar - Active Transportation Planning In Rural Communities - 4/13/22](#)**

The session will focus on planning in rural communities during the development of Westmoreland County's first rural active transportation plan. The Smithton Borough-Scottdale Borough Active Transportation Plan was adopted in December 2020 and provides an excellent example of how planners, local officials, and county and regional partnerships, non-profits, and institutional resources and state agencies can collaborate on community engagement and planning efforts. Capacity building at the local level was vital to developing a plan that advanced active transportation priorities, projects, and initiatives within local budgetary parameters and that met local governmental expectations.

### **[Webinar - Townships, HOAs, And Stormwater BMPs - 4/27/22](#)**

This webinar is designed to give participants strategies for ensuring that their homeowner associations (HOAs) maintain post-construction stormwater management practices, including tips for educating HOAs on the importance of stormwater management facility operation and maintenance; considerations for municipal acceptance of facilities; facility tracking and inspection; and identifying owners and their responsibilities.

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This monthly newsletter for members of the Pennsylvania State Association of Township Engineers focuses on news and matters of interest to municipal engineers and provides details on upcoming training opportunities. To access previous editions, log onto [www.psats.org](http://www.psats.org) and look under the "Newsroom" tab. Email comments and suggestions to James Wheeler at [jwheeler@psats.org](mailto:jwheeler@psats.org).

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**Pennsylvania State Association of Township Supervisors**

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