

PA Municipal Ordinance Developments

PACA Annual Meeting

November 13, 2023

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PA Municipal Ordinance Developments

- A quick review of the basics
- Public meetings/Agendas
- Board/Council Officials – obligations
- Court Decisions

Local Zoning Administration

PLANNING COMMISSION	GOVERNING BODY		ZONING HEARING BOARD
	<i>Legislative Function</i>	<i>Quasi-Judicial Function</i>	<i>Quasi-Judicial</i>
<i>Advisory</i> Develops Comprehensive Plan Recommends Ordinances and Amendments Recommends Official Map Recommends [or Hears/Decides] Subdivision/Land Developments/PRD Applications Recommends Conditional Use, Special Exception and Variance Applications Generally no Appellate Review	Adopts Zoning Ordinance & Amendments Adopts Subdivision and Land Development Ordinance & Amendments Adopts Official Map	Hears/Decides Conditional Use Applications Hears/Decides Validity Challenges (Curative Amendments Only) Hears/Decides Subdivision/Land Development/PRD Applications	Hears/Decides Appeals from Zoning Officer Determinations Hears/Decides Appeals from Enforcement Notices Hears/Decides Variance Applications Hears/Decides Special Exception Applications Hears/Decides Substantive Validity Challenges Appeals go to Court of Common Pleas
	Appeals/Challenges go to Court of Common Pleas or Zoning Hearing Board		
ZONING OFFICER	CODE ENFORCEMENT OFFICER	PLANNING DIRECTOR/STAFF PLANNER	
<i>Administrative</i>	<i>Administrative</i>	<i>Administrative</i>	
Grants/Denies Permit Applications Initiates Zoning Enforcement Actions Appeals to Zoning Hearing Board	Initiates Code Enforcement Actions (Uniform Construction Code and Property Maintenance Code)	Reviews Land Use Applications and Plans Administers Land Use Ordinances Grants/Denies Administrative Approvals, Where Authorized	

Typical Ordinance Provisions: Use Specific Standards

Objective Standards:

- **Setbacks** (50 to 150 feet from property line)
- **Maximum Height** (10 to 25 feet)
- **Minimum Lot Size** (10 to 50 acre minimum)
- **Maximum Lot Coverage** (25% to 50%)
- **Noise** (40-60 dBA)
- **Bufferyards**
- **Lighting/ glare**

Environmental Criteria:

- **Wetlands**
- **Steep slopes**
- **Forests/**
- **Erosion & sedimentation**
- **Stormwater**

Operation & Decommissioning Requirements:

- **Maintenance**
- **Abandonment/removal**
- **Bonding**

Other Considerations:

- **Aesthetics**
- **Property values**
- **Traffic**

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Public meeting issues

- Public Notice
- Agenda Published 24 hours before
 - Limitations on acting if not in agenda
 - Recent Commonwealth Court decision – *Coleman v. Parkland School District* - holds that these are the only exceptions:
 - Emergency Matters – clear and present danger to life or property;
 - De minimis – no funding, no contract (and only came up in last 24 hrs)
 - Matter brought up by public at meeting and only action is referring to staff
- How to track municipal developments

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Board/Council Composition

- Ethics/Conflicts
- Recusal
 - What should happen
 - Multiple recusals – rule of necessity
 - *Grim v. Maxatawny Township Board of Supervisors*, 1452 C.D. 2021 (Pa. Cmwlth. 2023)

PA Municipal Ordinance Developments

In Re Jaindl Land, 284 A.3d 1314

- Developers, Jaindl Land Company had an equitable interest in a Franklin County property which was split zoned in the Township's Light Industrial District (LI) and its Highway Commercial (HC) District. Township ordinance permitted industrial warehouses and distribution centers as a use by right in the LI District. In 2018 and 2019, representatives of Jaindl met with Township representatives about their project.
- In October 2019, the Township proposed amendments to the zoning map, which included rezoning a portion of the property from the Light Industrial District to the Transitional Commercial (TC) District, in which warehousing is not a permitted use. The Township mailed notices and advertised the proposed amendments including notice of a public hearing scheduled for January 14, 2020.
- The public hearing was held as advertised on January 14, 2020, but adoption of the amendment was tabled. The same day, Jaindl submitted a preliminary land development application for the construction of an industrial warehouse on the property. The ordinance was eventually adopted on January 28, 2020.

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In Re Jaindl Land, 284 A.3d 1314

- On February 5, 2020, the Township zoning officer issued a written determination that Jaindl's land development application was subject to the pending ordinance doctrine and denied the application on this basis.
- Jaindl appealed the Zoning Officer's decision and filed a substantive validity challenge to the Township Zoning Hearing Board. The Zoning Hearing Board affirmed the denial by the Zoning Officer and denied the validity challenge.
- The trial court held that because the Township had "advertised" the 2020 ordinance prior to submission of the land use application, the pending ordinance rule was applicable, and the 2020 ordinance governed the application, affirming the actions of the Board.
- On appeal, the Commonwealth Court reversed finding the Pending ordinance doctrine could not be invoked. In support of its holding, the Commonwealth Court looked to Section 503(4)(i) of the Municipalities Planning Code and noted that its language precluded a municipality from changing its zoning, subdivision or other governing ordinance after the filing of a land development application and then applying the new ordinance to the application.

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Consent by Neighbors

- Regulations allow for consent by neighbors to evade requirements
- Or regulations require consent by neighbors to project
- Neither permitted
 - In re: *Appeal of Towamencin Sumneytown Pike LLC*, 273 A.3d 95 (Pa. Cmwlth. 2022)
 - *Southpointe Golf Club, Inc. v. Board of Supervisors of Cecil Township*, 250 A.3d 495 (Pa. Cmwlth. 2021)

PA Municipal Ordinance Developments

Borough of West Chester v. PA System of Higher Ed.

- Commonwealth Court decision – a tax; Borough filed Writ of Certiorari to PA Supreme Court
- Stormwater ordinances across the Commonwealth with varying strategies, formulations
- Issue here is clouded because the appealing party has its own MS4 requirements and is a government entity
- Decision will be watched but if Supreme Court does not take up or affirms, other localities may not be impacted w/o further litigation

PA Municipal Ordinance Developments

- Legislation to watch ...
- HB 782 - Time to Fight Back for Communities
 - Development of Regional Significance and Impact
 - 100 acres or more of earth disturbance; increased traffic
 - Analyze impacts – traffic, future infrastructure costs, EMA, sewer, storm water, and others
 - Potential for neighboring municipalities to weigh in



Thanks for listening.

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