

PSATS Township Legal Defense Partnership

A Progress Report on Appellate-Level Court Cases Affecting Townships

Case summaries are compiled by Thomas L. Wenger, Esq., PSATS Legal Counsel.

TOWNSHIP ISSUES IN COURT

Numerous Legal Defense Partnership Cases Awaiting Judicial Decisions

In this issue, as we begin a new year and a new decade, we look at some of the cases that will carry over from 2009 as they await a judicial decision or further action by the litigants.

Usually this newsletter reviews the participation of the PSATS Township Legal Defense Partnership, and therefore its member townships, in recently decided court cases that could impact local governments statewide. In this issue, as we begin a new year and a new decade, we look at some of the cases that will carry over from 2009 as they await a judicial decision or further action by the litigants.

CONSTRUCTION CODE: Schuylkill Township v. Pennsylvania Builders Association

In this case, Schuylkill Township in Chester County adopted an ordinance mandating the installation of automatic sprinklers in a broad range of construction projects.

The Pennsylvania Builders Association challenged the ordinance before the state Department of Labor and Industry because sprinkler systems were not a requirement of the state's Uniform Construction Code. Although a municipality may adopt requirements stricter than those in the code, they must be justified by local circumstances and conditions. The township argued that the ordinance was an appropriate response to local circumstances that hampered firefighting.

However, the state Secretary of Labor and Industry concluded that the issues raised by the township were not atypical and therefore did not justify an exception to the code. He invalidated the ordinance, and the common pleas court and Commonwealth Court affirmed that decision.

The case is now on appeal to the state Supreme Court, which will focus on the interpretation and application of Section 503(j)(2) of the Pennsylvania Construction Code Act, which sets forth the standards of review for an ordinance challenge: "The department shall

review any ordinance which would equal or exceed the minimum requirements of the [UCC] based on the following standards:

(i) that certain clear and convincing local climatic, geologic, topographic, or public health and safety circumstances or conditions justify the exception." 35 P.S. §7210.503(j)(2).

The case has been briefed and argued and awaits a decision from the court.

Note: Pennsylvania has now adopted updates to the UCC that require the installation of sprinkler systems in new townhouses effective January 1, 2010, and in new single-family homes on January 1, 2011.

LAND USE: Frank Shaffer Family Limited Partnership v. Chanceford Township

The issue in this case is whether the creation of a planned community under the Pennsylvania Uniform Planned Community Act, and the conveyance of a unit therein, constitutes land development or subdivision subject to local land use ordinances.

The partnership built a single-family home on 25 acres. It then recorded a declaration and plat creating a three-part planned community on the same land: the parcel containing the house on 1 acre, another unit on 22 acres, and common open space on 2 acres. Immediately after recording the declaration, the partnership conveyed the unit with the house to the Shaffers.

Chanceford Township, in York County, issued an enforcement notice to the partnership, saying it had violated the subdivision and land development ordinance because it had not filed a plan to divide the property. The subsequent transfer of one unit of the property also constituted an illegal subdivision, the township said. ➤

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**Pennsylvania State
Association of
Township Supervisors**
*David M. Sanko,
Executive Director*
4855 Woodland Drive
Enola, PA 17025
Phone (717) 763-0930
Fax (717) 763-9732
www.psats.org

On appeal to the Commonwealth Court, the landowner argued that the property interest in a planned community is limited to ownership and occupancy and that the right to use the property remains with the planned community or condominium, of which a unit is only a portion.

Conversely, the township contended that ownership and use of the property are separate rights and that a “unit” cannot be separately used or developed in disregard of local ordinances and the Municipalities Planning Code.

The Commonwealth Court concluded that the landowner’s division of the property and conveyance of a unit without the township’s approval was an illegal subdivision. The case is now on appeal to the state Supreme Court, where legal briefs have been filed.

**E-MAIL AND OPEN RECORDS:
Worcester Township v. Commonwealth of Pennsylvania, Office of Open Records, and James Mollick**

This case may present one of the first court interpretations of the state’s new Right-to-Know Law. It began when a resident submitted a record request to Worcester Township, Montgomery County, for copies of e-mails sent between supervisors on their personal computers.

The township denied the request, claiming that e-mails from home computers were not records in the township’s possession and therefore were not subject to the Right-to-Know Law. The resident appealed to the state Office of Open Records, which directed the township to provide the requestor with “a few random examples of e-mails [sent over five years] to enable the resident to craft a more specific request.”

The township has appealed to the Montgomery County Court of Common Pleas, objecting to the office’s determination that:

- 1) the burden of proof was on the township to show that supervisors’ personal e-mails were exempt from the definition of public records; 2) the township’s notion of “in possession of the local agency” was incorrect; and 3) the state’s Sunshine Act silently controls the definition of a public record.

The township argues, in part, that the supervisors’ personal computers and e-mail accounts are not township-owned or controlled and are not on township property; therefore, it has no way to produce the requested e-mails as public records under the Right-to-Know Law.

PUBLIC LAND: In re: Erie Golf Course: Lake Erie Region Conservancy & Committee to Keep EGC Open v. City of Erie

Two issues appear in this case: 1) whether the language and legislative history of the Donated or Dedicated Property Act, 53 P.S. § 3381 et. seq., demonstrate the legislature’s intent that the act apply both to dedicated property and property offered for dedication that has no formal record of acceptance; and 2) whether the court should defer to the discretion of a municipality that seeks a remedy under the act because it believes the property can no longer be used and has ceased to serve the public interest.

After closing a city-owned golf course in 2006, Erie sought to abandon its use under the Donated Property Act because it was no longer practical to maintain. The lower court denied the petition and held that the act applied not to dedicated property but only to property offered in dedication where no formal record of acceptance could be located. Also, the court said, the city had not established that use of the course was no longer practical.

The Commonwealth Court found in favor of the city, saying the act *did* apply to dedicated property.


The court also held that the legislature intended to give local governments the discretion to determine when a property’s use is no longer practical or no longer serves the public interest.

Because the Commonwealth Court held that the trial court should have deferred to the city’s discretion and reviewed the case only for bad faith, fraud, capricious action, or abuse of power, it is now on appeal to the state Supreme Court.

LAND CONDEMNATION: Lower Makefield Township, Bucks County v. Lands of Chester Dalgewicz, et al.

In this case, the township condemned farmland to use as a public golf course. The Commonwealth Court held that this was a proper use of the land, and the common pleas court was then asked to determine the property’s value.

The issue is whether the common pleas court erred by allowing as evidence: 1) a contract for the property that was dated two years after the condemnation; and 2) a dollar amount noted in a nonbinding letter of intent to purchase the property.

Briefs have been filed, and the case awaits disposition by the Commonwealth Court. 

The court held that the legislature intended to give local governments the discretion to determine when a property’s use is no longer practical or no longer serves the public interest.