



Pennsylvania Land Use Law Update: Appellate Cases from 2023-2024

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Presenters



Charles M. Suhr

Shareholder

717.255.7356

charles.suhr@stevenslee.com

Charlie concentrates his practice in real estate with an emphasis on land development. He represents landowners and developers in obtaining municipal approvals for residential, commercial and industrial developments and appears before local planning commissions, governing bodies and zoning hearing boards throughout South Central Pennsylvania.

Charlie has successfully challenged municipal land development decisions and zoning hearing board decisions in the Courts of Common Pleas and the Pennsylvania Commonwealth Court. He has also successfully brought and defended procedural challenges to the adoption of municipal zoning ordinances.

Prior to attending law school, Charlie worked as a geostatistician in the South African gold mining industry, where he tested and implemented underground sampling methods and procedures and valued gold and other ore reserves. Today, he uses his technical background, analytical skills and understanding of spatial components to gain a thorough understanding of the engineering and other technical aspects of a land development project, which helps his clients gain successful municipal approvals.

Presenters



Leah Eppinger, AICP

Executive Director, Housing Authority of the County of Dauphin
President, Affordable Housing Associates
717.939.9301 x512
leppinger@dauphinhousing.org

Leah Eppinger, AICP, is the Executive Director of the Housing Authority of the County of Dauphin. At the Housing Authority, she works to maintain a strong Public Housing Program and Housing Choice Voucher Program, which is responsible for the housing of over 2,000 Dauphin County households. Leah also is the President of the Affordable Housing Associates of Dauphin County, where the main goal is to maintain and increase the affordable housing stock in the county.

During the past few years, Leah has developed a number of new programs and worked with local municipalities to increase the number of affordable housing units in the county while also reducing barriers. Leah serves as a statewide elected member of the Pennsylvania Chapter of the American Planning Association Executive Board where she continues to promote housing opportunities and affordability through legislative and local municipal codes.

Pennsylvania Land Use Appellate Case Law and Statutory Update 2023-2024

Case Law Update

Carnahan v. Slippery Rock Twp. Zoning Hearing Bd., 305 A.3d 211 (Pa. Cmwlth. 11/08/2023) (Ceisler)

- Asphalt plant
- Rezoning from Rural Conservation to Light Industrial
- Objector's standing to appeal
- Spot zoning



Case Law Update

Brookview Solar I, LLC v. Mount Joy Township Bd. of Supervisors, 305 A.3d 1222 (Pa. Cmwlth. 11/30/2023) (Leavitt)

- 500-acre solar array
- Conditional Use
- 21 hearings over 14 months
- Glare Analysis – Expert Report



Case Law Update

Riccio v. Newtown Twp. Zoning Hearing Bd., 308 A.3d 928 (Pa. Cmwlt. 01/12/2024) (McCullough)

- Deed with two tracts with separate legal descriptions
- Dimensional variance to develop undersized lot
- No merger of tracts

Case Law Update

House 2 Home, LLC v. Zoning Hearing Bd. of N. Coventry Twp., 308 A.3d 391 (Pa. Cmwlth. 01/16/2024) (Leavitt)

- Nonconforming manufacturing facility in I-2 Zone
- Protection of permitted accessory use to nonconforming use

Case Law Update

Smith Land & Improvement Corp. v. Swatara Twp. Zoning Hearing Bd., 313 A.3d 477 (Table) (Pa. Cmwlth. 01/17/2024) (Ceisler)

- Conditional Use Application
- Pending Ordinance Rule

Case Law Update

Quaker Valley Sch. Dist. v. Leet Twp. Zoning Hearing Bd., 309 A.3d 279 (Pa. Cmwlth. 01/26/2024) (Leadbetter)

- Special exception for high school on 108 acres
- No specific standards for school use
- ZHB's proposed conditions of approval
- Objectors burden as to general criteria



Case Law Update

Johnson v. Pocono Twp. Zoning Hearing Bd., 310 A.3d 836 (Pa. Cmwlt. 02/07/2024) (McCullough)

- Short Term Rental
- Certificate of Nonconformity



Case Law Update

RDM Group v. Pittston Twp. Zoning Hearing Bd., 311 A.3d 1216 (Pa. Cmwlth. 02/20/2024) (McCullough)

- Warehouse in R-1 District
- Use Variance



Case Law Update

E&R Partners, LP v. Robinson Twp. Zoning Hearing Bd., 311 A.3d 1191 (Pa. Cmwlth. 02/20/2024) (Covey) 3/19/24 (allocatur pending)

- Operation of business in basement without occupancy permit
- Cease and Desist letter
- Magistrate's summary conviction
- Enforcement Notice – Appeal?



Case Law Update

Soland v. Zoning Hearing Bd. of East Bradford Twp., 311 A.3d 1208 (Pa. Cmwlth. 02/20/2024) (Leadbetter) (allocatur pending)

- Bed & Breakfast
- De Minimis Use Variance



Case Law Update

Shyam Ventures, LLC v. Zoning Hearing Bd. of Borough of Castle Shannon, 313 A.3d 314 (Pa. Cmwlth. 03/07/2024) (Covey) (allocatur pending)

- Nonconforming U-Haul rental and coin-operated laundromat
- Sale of snack food, drinks, ATM
- Expansion of Nonconforming Use

Case Law Update

CRG Services Management, LLC v. Lowhill Twp., 318 A.3d 147 (Pa. Cmwlth. 06/03/2024) (Covey)

- Land Development Plan
- Deemed Approval
- Adequacy of Written Decision

Case Law Update

Folk v. Mifflin Twp Zoning Hearing Bd., 317 A.3d 716 (Pa. Cmwlth. 06/05/2024)

- Farm raising caterpillars, butterflies and chrysales
- Use variance for private wedding event venue filed 6/26/2021
- Hearing held 8/26/2021
- ZHB denies request
- Trial Court reverses, and adds conditions based on testimony
- Deemed approval with conditions?

Case Law Update

Cogan Properties, LLC v. East Union Twp. Zoning Hearing Bd., 318 A.3d 981 (Pa. Cmwlth. 06/12/2024) (Fizzano Cannon)

- Special exception application for gun range as a “private recreation facility” on 526-acre property
- Applicant’s testimony as to compatibility of use



Case Law Update

St. Elmo Development, LLC v. Zoning Hearing Bd. of City of Allentown, __ A.3d __ (Pa. Cmwlth. 07/02/2024) 2024 WL 3260823 (Covey)

- Storage Rental Facility
- Notice of Violation
- Municipalities Burden of proof



Case Law Update

PC Land LLC v. Board of Commissioners of Bethlehem Twp., __ A.3d__ (Pa. Cmwlth. 07/05/2024) 2024 WL 3306958 (allocatur pending)

- Building Permit with Conditions
- Highway Occupancy Permit
- Mandamus



Case Law Update

Mahoning Twp. v. Zoning Hearing Bd., ___ A.3d ___ (Pa. Cmwlth. 07/12/2024) 2024 WL 3381614

- Nonconforming drive-in theater
- Overnight pass program for theater customers
- Notice of Violation – operating a campground
- Campground accessory to drive-in theater?



Case Law Update

Bird v. Zoning Hearing Bd. of Municipality of Bethel Park, __ A.3d __ (Pa. Cmwlth. 07/12/2024) 2024 WL 3381566 (allocatur pending)

- FurKid Animal Rescue operating out of house in R-3 District
- Citation for 31 dogs in home without license
- Use variance for a kennel (pro se) denied
- Trial Court argued vague ordinance, and variance by estoppel



Case Law Update

AUUE, Inc. v. Borough of Jefferson Hills Zoning Hearing Bd., 318 A.3d 771 (Pa. 07/17/2024) (Brobson)

- Use permit issued for medical center
- Submitted plans showed non-compliance with various provisions of zoning ordinance
- ZHB grants objectors appeal and TC affirms

Case Law Update

Harding v. Harrisburg City ZHB, 2024 WL 2728461 (Pa. Cmwlth. 8/9/2024) (Fizzano Cannon)

- Parking lot
- Use variance



Questions?



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