



## IN THE ZONE WITH ROB GUNDLACH

Spring 2023

### Chairman's Message



I recently attended the annual spring convention of the Society of Industrial and Office Realtors in Toronto. The event drew SIOR members from across the country. The President of the SIOR Philadelphia Chapter, Colin A. Flynn of The Flynn Company, was there to “lead the charge” among the Philadelphia-area members. The next area SIOR event is scheduled for September 25-26 at the

ArtsQuest Center at SteelStacks in Bethlehem. Fox is a sponsor for this local event.

In this issue, we summarize the rulings in a few significant and relevant court cases, including one “hot-off-the-press” summary of a May 25 ruling from the U.S. Supreme Court that may ease wetlands restrictions for certain projects. We also share some important news items from the Building Industry Association of Philadelphia and the Bucks County Planning Commission. Finally, we have included a few summaries of Pennsylvania zoning and land use cases and an article from a guest contributor on 1031 transactions (Margo McDonnell from 1031 Corp.)

I always like to hear what you think of the newsletter. Send me a note about your favorite item or something you would like to see included in the future.

Stay well,

Rob Gundlach

### **U.S. Supreme Court Loosens the Clean Water Act's Grip on Wetlands**

In its May 25 decision in *Sackett v. Environmental Protection Agency, et al.*, the high court significantly restricted the jurisdictions of the EPA and the U.S. Army Corps of Engineers over wetlands.

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### **Pennsylvania Appellate Court Upholds 'Mixed-Used Neighborhood' Zoning Ordinance**

In a ruling that clarifies the meaning of illegal "spot zoning," the Pennsylvania Commonwealth Court has rejected a challenge to an Allegheny County municipality's zoning ordinance that created a mixed-used neighborhood (MUN) zoning designation.

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### **Commonwealth Court Vacates Development Approval Due to Unaddressed Special Exception**

A ruling that ordered new zoning hearings for a 1.6-million-square-foot warehouse in Berks County underscores the lesson that developers must carefully address every zoning component and, when in doubt, request relief or secure a formal determination from a zoning officer that relief is not required.

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### **BCPC Launches New Act 247 Database and Payment System**

On May 15, the Bucks County Planning Commission launched its new Act 247 database and electronic submission and fee payment system. Applicants for subdivisions and land developments, municipal and school district actions, and sewage planning modules are now required to submit through [BCPC Applications Portal](#). The new submission system is designed to modernize recordkeeping, allow fee processing through electronic payment, provide an enhanced user interface and boost efficiency in our review process. BCPC says the new system is very user-friendly, but encourages all applicants to familiarize themselves with the new procedures and the tutorials. If you have any questions, call 215.345.3400 or email [planningcommission@buckscounty.org](mailto:planningcommission@buckscounty.org).

### **Three Essential Tips for Borrowers Pledging Equity in a Real Estate Loan**

The "dual collateral" approach is becoming a popular model of documenting real estate loans that is favored by lenders for the ease it brings to forcing a UCC sale. Borrowers considering this option should therefore focus on these important negotiating points in the term sheet or loan agreement to protect their rights.

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### **Building and Construction Industry Exemption to Withdrawal Liability May Apply Narrowly**

A recent decision from the Southern District of New York reveals that courts may be inclined in some withdrawal liability cases to narrowly apply the building and construction industry exemption based on the nature and location of the work performed.

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### **BIA Monitors Bills Before Philadelphia City Council**

Rob Gundlach and Carrie Nase-Poust are both active members of the Building Industry Association of Philadelphia. In February, BIA testified in support of Bill No. 221015, which would provide a 100% tax abatement for affordable housing in North Philadelphia, urging City Council to expand it citywide. And on March 22, the BIA testified against rent control at a hearing for Resolution 200057.

#### **Bills currently on BIA's Watchlist include:**

- **220081**, imposing a temporary demolition moratorium in the 8th District.
- **220299**, requiring high-rise apartment buildings to install sprinkler systems.
- **220843**, North Philadelphia inclusionary zoning.
- **230318**, creating the EOD East Poplar Overlay District.
- **230319**, revising the FDO Fourth District Overlay District
- **230322**, modifying the Affordable Housing Preservation Overlay District.
- **230323**, creating a mechanism for satisfying certain use standards related to the construction of affordable housing in a portion of the MIN Overlay District.

If you would like to discuss a new development project in Philadelphia, please feel free to contact either Rob Gundlach at [rgundlach@foxrothschild.com](mailto:rgundlach@foxrothschild.com) or Carrie Nase-Poust at [cnase-poust@foxrothschild.com](mailto:cnase-poust@foxrothschild.com).

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### **Make Shore Rentals Go Farther With a 1031 Exchange**

As properties on the Jersey Shore become more desirable investments, owners can use a 1031 exchange to leverage greater buying power and move into more suitable real estate investments – in addition to tax savings. This 100-year-old tax strategy motivates sellers and preserves both equity and wealth through tax-deferred exchanges of like-kind real property for investment or business use. In this article, authored by 1031 Corp. President Margo McDonnell, you'll follow Frank, Gene and Helen as they buy and sell a shore property using 1031 exchanges – allowing them to buy bigger, transform their investment and have money left over for improvements.

[Read More](#)

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If you have questions or want information about how to best prosecute zoning and land use appeals, or if you are looking for assistance with your next real estate transaction, please contact **Rob Gundlach** at **215.918.3636** or [rgundlach@foxrothschild.com](mailto:rgundlach@foxrothschild.com).

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