



IN THE ZONE WITH ROB GUNDLACH

July/August 2021

Chairman's Message

Summer is winding down and fall is right around the corner – bringing football season and the chance to attend football games once again. Last week, a few colleagues and I ventured down to an Eagles preseason game against the Patriots. On a positive note: (1) the subways were running to the stadium, (2) the “Schmitter” sandwich was available along with 30-ounce cans of Bud Light to wash it down, and (3) the frisbee dog performed at halftime to the loudest cheers of the night.

On a negative note: (1) both the Eagles offense and defense never really showed up, (2) the play-by-play announcer was drowned out by the incessant “boos,” and (3) the fans brought back “the wave” to pass the time.

Turning back to work and the real estate market, we have seen numerous development projects proposed in the suburbs this year and a flurry of zoning and land use litigation. Some of this litigation is the result of decisions at the municipal level that are not in the best interest of the general public and, at times, quite ridiculous.

One recent decision, for you Pittsburgh fans, was *PSSI Stadium, LLC v. City of Pittsburgh*, a zoning dispute involving Heinz Field, a 68,400-seat stadium that is home to the Steelers. The stadium owners wanted to paint some of the seats in contrasting colors to create a pattern depicting the words “Heinz Field,” with the words oriented toward the open end of the stadium and visible from outside and above.

PSSI (Applicant) maintained that the information conveyed on the painted seats should be considered an interior sign exempt from the signage regulations in the Zoning Ordinance. Instead, the City’s zoning officer concluded it was analogous to a roof sign because it was designed to face the sky and visible the same way as a prohibited roof sign. Applicant filed a protest appeal with the ZBA, which denied it without taking additional evidence. The trial court reversed and the City appealed to the Commonwealth Court.

Thank goodness for the “common sense” on the Commonwealth Court, which found

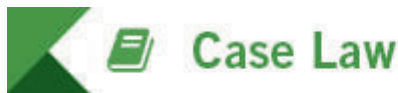
that the painting of seats inside the stadium cannot be considered an exterior sign. In its decision, the Court noted that the City conceded that logos on the playing fields, including logos for the NFL, are permissible even though they can be viewed from the exterior of the stadium.

This case is a perfect example of how some municipalities take interpretations of their zoning ordinances too far. Unfortunately, this type of dispute is all too common and can take several years to resolve. Making matters worse, it is extremely difficult in Pennsylvania for victorious applicants to recover damages for lost time or reimbursement of attorney's fees ... unless, of course, they find "smoking gun" evidence that will "shock the conscience" of the court.

For further information as to how to best prosecute zoning and land use appeals, please contact **Rob Gundlach** at **215.918.3636** or RGundlach@foxrothschild.com.



Rob Gundlach



Property Owner Allowed to Present Expert Evidence of 'Highest and Best Use' in Condemnation Proceedings

The Pennsylvania Commonwealth Court has upheld a property owner's use of a land planner's expert report in a challenge to a condemnation.

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Commonwealth Court Strikes Down Ordinance Banning Digital Billboards

A municipality cannot impose a total ban on digital billboards within its borders without showing evidence that excluding such signage "bears a substantial relationship to the public health, safety, morality, or welfare," the Pennsylvania Commonwealth Court has ruled.

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Commonwealth Court Rejects Attempt to Set Aside PennDOT Condemnation

In a condemnation case, the Pennsylvania Commonwealth Court has rejected a property owner's challenge to a PennDOT's taking of three parcels for a road-widening project, rejecting a claim that the agency's investigation fell short of its duties under the law.

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Habitat Assessments – Spotlight on the Eastern Spadefoot Toad

To ensure that no endangered species will pose a conflict, the first step in many

development projects is to request a Pennsylvania Natural Diversity Inventory (PNDI) database search for a threatened and endangered species impact review.

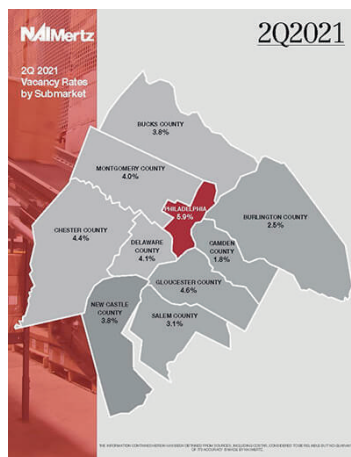
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Project Approval Spotlight

Andrew Stoll secured various forms of zoning relief in connection with an industrial development project in Bensalem Township. The project will allow for both industrial and commercial uses at the property. Overcoming the hurdle of obtaining the multiple layers of zoning relief will allow the property owner to improve and maximize the value of its property.

Marketplace

Second quarter commercial leasing activity remains strong throughout the Greater Philadelphia region, according to the **2Q 2021 Report on Southern NJ/Philly Metro** from NAI Mertz, a leading full-service commercial real estate firm.



With just over 7.6 million square feet leased, the year-to-date total of 12.9 million square feet is slightly outpacing the 12.7 million square feet leased at this time last year.

Also included in the report: Vacancy rates by submarket, top transactions in the 10-county Greater Philadelphia area and major commercial projects under construction. Visit the NAI Mertz website for an **inventory** of its current listings.

If you are a commercial broker and are interested in being featured in a future issue of this newsletter, please reach out to **Rob Gundlach** at rgundlach@foxrothschild.com.

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