



In the Zone

with Rob Gundlach

Summer 2024

Chairman's Message

I hope you are all enjoying your summer. It sure has been a hot one this year in the Northeast. I just hope that doesn't translate to a cold one this winter.

The Philadelphia ICSC convention was moved to Atlantic City this year and also moved up to August 7 and 8. If you are able to attend please stop by our booth for an iced coffee and some conversation. The retail leasing sector has also been hot this past year.

Eight Fox attorneys wrote articles for this issue that touch on a range of important topics for developers, including court decisions on the powers of zoning officers, the time to get protest testimony excluded in zoning proceedings, and a Pennsylvania pilot program that will speed up permits for stormwater construction projects.

There's also an article on the rise of representation and warranty insurance in real estate deals — a trend that started in Europe — and an analysis of a Commonwealth Court decision that upheld rejection of a planned 41-townhome project due to its failure to adhere to the requirements for the use of open space. A special shoutout to our summer law clerk, Jack Auteri, who wrote an article about a zoning dispute involving rejected plans to develop a transitional living facility.

I hope all is well with you and yours. If there's something you would like to see in a future issue of the newsletter, please reach out to me directly.

Stay well,

Rob Gundlach

Alerts

Courts Find Airbnb Rentals Not Barred by Restrictive Covenant

By Robert Kravets

The ruling against a homeowners' association underscores the value of establishing a condominium or planned community, which have more flexibility to modify rules.

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Appellate Court Allows Exclusion of All Protest Testimony by the ZBA

By Rob Gundlach

A recent Commonwealth Court decision may be useful to shorten zoning proceedings when the sole issue is whether a zoning permit was properly issued.

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Pilot Program Speeds Up Permits for NPDES Stormwater Construction Projects

By M. Joel Bolstein

Launched in May by the Pennsylvania Department of Environmental Protection, the program covering 10 Pennsylvania counties – including Bucks, Chester, Lehigh and Montgomery. It aims to shorten review times for stormwater permits by 42%.

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Court Holds Character of Neighborhood and Zoning District Is an Objective, Not Subjective Standard

By Dan Lyons

This Commonwealth Court rejection of a special exception reinforces the importance of neighborhood compatibility in zoning decisions.

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The Rise of Representation and Warranty Insurance in Real Estate Deals

By Zachary Berger

Historically used more in mergers and acquisitions, R&W Insurance is now making significant inroads into standard real estate purchases and sales.

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Waiver Requests in Land Development: A Step Not to Be Taken Lightly

By Andrew R. Stoll

This case offers important lessons about the challenges developers face when seeking a waiver from provisions of a municipality's subdivision and land development ordinance.

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Municipality May Deny Developers' Combined Uses

By Jack Auteri

Rejecting an appeal by developers of a proposed transitional living facility, the Commonwealth Court said municipalities are not required to modify zoning laws to fit specific business models.

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Developer's Plan Rejected for Improper Use of Open Space

By Jenna Kasman

A 41-townhome project was properly rejected, an appeals court found, because its conditional use application included an underground stormwater management system in the same area it labeled as open space.

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Decision Clarifies Role of Zoning Officers in Determinations

By Andrew R. Stoll

The Commonwealth Court held that verbal statements from a zoning officer can serve as official "determinations" or "interpretations" that trigger a 30-day appeal period under the Pennsylvania Municipalities Planning Code.

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Events



Cool Down With Fox at ICSC!

If you're planning to attend **ICSC in Atlantic City** next month, stop by Fox's booth for iced coffee (while supplies last!) and a chance to connect with those who are driving the marketplace industry forward in the tristate area. As you will see, Fox always brings good coffee and great energy to this event.



SIOR Philadelphia Chapter – Annual Meeting

Fox sponsored and attended **SIOR Philadelphia**'s annual meeting at the Llanerch Country Club in Havertown, PA. Partner **Rob Gundlach** and Associate **Jenna Kasman** connected with leading real estate professionals to talk about development trends and the future of Philadelphia's real estate market. Real estate professionals who have earned the SIOR designation are recognized as the most capable and experienced brokerage practitioners in any market.

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**.

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