

In the Zone

with Rob Gundlach

Winter 2024

Chairman's Message

Happy New Year to all! I hope your fall was busy and productive and that you found some time over the holidays to relax and reconnect with your families.

In this issue of the newsletter, we start with a story of an "EPIC Win-Win" for a Fox landlord client. Dan Lyons reports on the workings of the Montgomery County Eviction Prevention and Intervention Coalition (EPIC). The article notes that EPIC is just one of several eviction prevention programs in Pennsylvania that works through the courts to leave both the tenant and landlord in a better position.

We also bring you a few interesting alerts about court rulings. First, the role of zoning officers was front and center in a Pennsylvania Commonwealth Court decision. It clarifies that such officers can resolve issues by determination before the owner submits a subdivision or land development application. But the ruling also carries a word of caution: owners must be sure to publish those determinations to ensure they can be relied upon in the subdivision/land development approval process.

Cell towers are always a hot topic in courts. A Pennsylvania township lost its appeal before the 3rd Circuit when the judges said federal law overrode the local ordinance. When it comes to cell towers, the court said, "Congress preserved local zoning authority only up to a point." Read our alert for more on how the Telecommunication Act can preempt local zoning regulations.

The PA courts have confirmed the ability of a property owner to use the PA Condominium Act to create for-sale units from for-rent apartments. This is a must-read for property owners who want to sell individual units in a multi-unit project without having to navigate multiple municipal zoning and other land use ordinances.

A shared dirt road between two properties led to an important ruling on easements when a PA appellate court held that decades of using the road for residential access did not "evolve" to allow commercial use when one owner leased a tract to quarry operators.

Finally see two items from our guest contributors about the current state of the commercial real estate market and available financing options. If you have an article or information to contribute for a future issue, please reach out to us.

Stay well,



Rob Gundlach

News

An EPIC Win-Win

Eviction prevention programs help residential tenants and landlords alike by forging an agreement that leaves both the tenant and landlord in a better position.

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Alerts

Appellate Court Clarifies Role of Zoning Officer

The ruling explains the role of zoning officer in land development matters and underscores the importance for property owners to publish determinations of a zoning officer.

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Condominiums Didn't Need Subdivision or Land Development Approval

A property owner prevailed in an appeal over the owner's filing of a Declaration of Condominium.

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Third Circuit Green Lights PA Cell Tower Under Federal Law

The federal appeals court ruled that the Telecommunications Act strictly limits the powers of local zoning boards to regulate the placement of cell towers.

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Easement Cannot 'Evolve' From Residential to Commercial

An important ruling on the law on easements came in a long-running dispute over a dirt access road shared for nearly six decades by neighboring property owners.

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Homeowners' Zoning Appeal Rejected as Untimely

Under Pennsylvania zoning law, the 30-day clock starts running on the right to file an appeal as soon as an interested party has "constructive notice" that a zoning permit has been granted – even if that notice began with a casual conversation among neighbors.

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NJ Weighs Affordable Housing Legislation

New Jersey may re-introduce a bill this year to abolish the Council on Affordable Housing and create a judicially administered process to determine regional affordable housing

needs.

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Events



Left to right: Robert Kravets, Dan Lyons, Rob Gundlach and Drew Stoll at Fox Rothschild's party to celebrate the Bucks County Classic in Doylestown Borough.



Left to right: Carrie Nase-Poust, Rob Gundlach and Craig Finger, posing at the "Refuel With Fox Rothschild" booth at this year's ICSC@PA/NJ/DE conference in Philadelphia.

Resources

Doug Veasey of Kenilworth Capital Partners notes that his firm is seeing increased opportunity to take advantage of the run-up in interest rates to provide rescue capital to high-quality real estate developers and operators.

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Joseph D. Pasquarella, Senior Managing Director of Newmark Group, Inc., provided us with the **Capital Markets Report** prepared by Newmark Research. The report examines the commercial real estate market and offers analysis on the U.S. economy – which continues to prove surprisingly resilient to rising rates – as well as debt markets, equity markets, pricing and returns.

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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.

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