In the Zone

Fox Rothschild LLP
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A newsletter of the Real Estate Department and the Zoning and Land Use Practice Group

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Takings in Pennsylvania Related to Private Projects But With Public Benefits

By Robert W. Gundlach, Jr.

A recent case out of the Bucks County Court of Common Pleas has shed further light as to the right of a municipality in Pennsylvania to condemn lands related to a private development. In the case of *In Re: Condemnation of Sagot*, Bensalem Township enacted a resolution authorizing the condemnation of permanent rights of way and easements for the purpose of installing sidewalks and related improvements in the vicinity of the Parx Casino project. Parx agreed to pay for the costs related to the process, procedure and installation of these improvements. Preliminary objections were filed by neighboring property owners who contended that the condemnations were unlawful for the reason that the primary beneficiary of the condemnation was a single private entity. The issues raised in the preliminary objections were as follows:

1. Whether the township was required to obtain approval from PennDot prior to condemning the subject properties.
2. Whether the taking was sufficient and for public purpose.
3. Whether the taking was excessive.

In reviewing the preliminary objections, the court noted the following black letter law on this subject:

- Private property can be condemned by a municipality but only if the condemnation is primarily for a public use.
- The township cannot confiscate private property even if appropriate payment of just compensation is made where the ultimate intended use is exquisitely private.
- A taking will be seen as having a public purpose only where the public is to be the primary and paramount beneficiary of the exercise.
- A taking by eminent domain does not lose its public character merely because there may exist some feature of private gain.
- If public good is enhanced, it is immaterial that a private interest also may be benefitted.

In reviewing the record, the court in this case was satisfied that this taking addressed a fundamental public purpose of protecting the health, safety and welfare of the public, in that sidewalks in this area would be a clear public benefit. In this regard, and after referencing the U.S. Supreme Court Case of *Kelo* in 2005 (noting that the U.S. Supreme Court expansively determined that private property may be condemned in favor of private economic development in that enhanced business activity developed either directly or indirectly to the ultimate benefit of the general public even if incidental) and the recent Pennsylvania Supreme Court case in *Reading* (where the court examined the permissibility of takings that benefit private interests), the Bucks County Court of Common Pleas upheld the condemnation in this case. In these cases, it is important to carefully examine the proposed indemnity/development agreement between the municipality and the developer as to the proposed process.

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In This Issue:

Sometimes It Just Pays To Be Hostile

By John L. Grossman

On March 6, 2015, the New Jersey Appellate Division, in a yet-to-be published opinion, reiterated the longstanding maxim that when one is claiming an interest in land owned by another based upon use or a claim of right, it is better to be hostile than friendly. In *Bloom v. Morales*, the plaintiff property owner, premised essentially upon extended periods of use by his deceased mother, who previously owned the plaintiff's property, claimed a prescriptive easement in the adjacent neighbor's driveway used by her and subsequently by him for access to the garage in the rear of his property. The driveway was located entirely upon the adjacent neighbor's property. The plaintiff's mother enjoyed a friendly relationship with her neighbor.

After the mother's death, the neighbor sold their property. The new owners began constructing a stockade fence along the property line, thus impairing the plaintiff's continued use. The plaintiff sought an injunction, after which a series of motions were filed. The plaintiff sought an easement by prescription. The neighbors countered that the driveway use was consensual[1].

1 The length of time during which the driveway was used by the plaintiff's mother satisfied the thirty-year requirement and was not an issue.

On review, the trial court found no evidence that the plaintiff's mother's use, or the plaintiff's use, of the driveway was hostile, a necessary element to create an easement by prescription (the same element of proof is necessary when claiming title by adverse possession).

On appeal, the Appellate Division affirmed, finding that the plaintiff failed to establish that his mother's use of the driveway was adverse or hostile and under a claim of right, rather than indulgent and permissive. The record was devoid of the required element of adversity.

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Commonwealth Court Holds That Zoning Provision Permitting "One- or Two-Family Dwellings" Without Specifying How Many Dwellings Were Permitted on Each Lot was Ambiguous, and was To Be Construed in Favor of Landowner

By Clair E. Wischusen

In *Riverfront Development Group, LLC v. City of Harrisburg Zoning Hearing Bd.*, --- A.3d ---, 2015 WL 400542 (Pa. Commw. 2015), the Commonwealth Court held that the Harrisburg Zoning Hearing Board abused its discretion in denying a developer's application by creating a lot limitation not expressly contained in the zoning code.

In the case, a developer submitted an application to construct two, two-unit rental apartment buildings on one lot. The developer also sought a special exception and variances to waive portions of the setback and accessory parking requirements. The developer contended that the applicable provision did not stop him from building two buildings on one lot:

(a) In an RLA Zoning, only the following buildings, structures and uses shall be permitted:

(1) one- or two-family detached dwellings having a floor area of 400 square feet or more for each family. Two-family dwellings require separate outdoor or vestibule entrance on the ground floor, front and rear, for each family;

(2) one- or two-family semi-detached and attached dwellings having a floor area of 400 square feet or more for each family. Two-family dwellings require separate outdoor or vestibule entrance, front and rear, for each family; provided, however, that in cases of conversion or remodeling of existing buildings, the separate entrances may be from a common hall or stair hall[.]

The board disagreed with the developer's interpretation of the zoning code that "the restriction to 'one- or two-family dwellings means that [developer] can erect as many one- or two-family dwellings on a lot as he wants to." The board held that the developer's interpretation of the zoning code would "eliminate the idea of single-family-per-lot-neighborhoods, or two-family-per-lot-neighborhoods by allowing a developer to increase the number of structures on the lot, regardless of the zoning limitations" and stated that this interpretation "flies in the face of the clear words, as well as the intent, of the code." Thus, the board denied the application on the ground that the developer failed to prove entitlement to a variance to erect four dwelling units and concluded that the other parking, dimensional and design issues need not be reached.

The developer appealed to the trial court. The trial court affirmed the board's decision finding that the board's interpretation of its own zoning code was entitled to great weight and deference and that the board's interpretation of the number of lots was reasonable. The trial court further concluded that the developer's interpretation of the zoning code, that as many one- or two-family dwellings as feasible can be built on a lot, was contrary to the zoning code's wording and general intent.

The developer appealed to the Commonwealth Court. The specific question presented on appeal was whether it was clear from the above provision that there was a limitation on the number of units permitted per lot. The Commonwealth Court concluded it was not clear.

In reviewing the provision, the court found there was no specific language in the provision that restricted the number of one- or two-family dwellings permitted on a given lot. Rather, the zoning provision permits the construction of "one- or two-family detached dwellings having a floor area of 400 square feet or more for each family" so long as the buildings are in conformance with the remainder of the zoning code.

The court emphasized that a zoning hearing board must enforce the literal terms of a zoning code as written without imposing its own concept of how an ordinance should have been drafted. The court further noted that the board had an obligation to construe the words of an ordinance as broadly as possible to give the landowner the benefit of the least restrictive use when interpreting its own zoning code. The court found that it is an abuse of discretion for the board to narrow the terms of an ordinance so as to further restrict the use of property.

The court observed that the zoning provision permits "one- or two-family detached dwellings" without specifying how many detached dwellings are permitted on each lot. The court noted that in drafting the provision, the city council could have simply omitted the word "or" to signify that only one two-family detached dwelling was permitted per lot. Indeed, if the city council had

intended to place a restriction on the number of detached dwellings allowed per lot, the "or" in between "one" and "two-family" would be unnecessary.

The court found that the board should have resolved the ambiguity in favor of the applicant, permitting multiple dwellings per lot instead of superimposing its own desired interpretation. The court noted there are safeguards in the zoning code, such as setback and square-footage requirements, that address any overcrowding concerns. The court found that if the city council desired a restriction on the number of dwellings per lot beyond that provided by the dimensional requirements, it simply could have signified that only one dwelling could be built per lot.

As a related issue, the court rejected the developer's contention that his application for a special exception to the zoning code's setback requirements should be deemed approved because the board failed to issue a determination regarding that issue within 45 days as required by section 908(9) of the Municipalities Planning Code, 53 P.S. § 10908(9) ("The board … shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the board."). The court found that the board issued a determination within 10 days from the hearing, denying the developer's application on the basis that no more than on one unit is permitted per lot. There was no need for the board to reach a decision on the special exception issue when it already determined (*albeit*, erroneously) that it would deny the developer's application on the basis of the lot restriction.

Therefore, the court reversed the trial court's order denying the developer's application on the basis that no more than one dwelling is permitted per lot and remanded the matter to the trial court with directions to remand to the board for findings regarding the developer's application for a variance and a special exception for setback, parking and design issues.

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NJ Supreme Court Provides the Path Forward on Affordable Housing

By Henry Kent-Smith

In a 55-page opinion released March 10, the New Jersey Supreme Court broke the deadlock relative to municipal compliance with the *Mount Laurel* constitutional obligation. In an order in response to a motion to enforce litigant's rights filed by Fair Share Housing Center from the judgment issued in *In Re Adoption of N.J.A.C. 5:96 & 5:97*, 215 N. J. 578 (2013), the Supreme Court terminated any requirement to exhaust administrative remedies before the Council on Affordable Housing (COAH). Moving forward, jurisdiction of affordable housing compliance will be determined by the judiciary.

The Supreme Court provided limited blanket immunity to all municipalities to assess whether to voluntarily submit to the court's jurisdiction or to "take their chances" with potential builders remedy claims. The March 10, 2015, order does not take effect until June 8, 2015. During this 90-day immunity period, municipalities are free to determine their third round affordable housing obligation and whether they will elect to voluntarily pursue a judicial declaration of compliance with the *Mt. Laurel* fair share obligation.

Municipalities will be provided a 30-day "window" within which to file declaratory judgment actions to invoke the court's jurisdiction over the determination that the municipality has appropriately addressed the third round affordable housing obligation. This filing "window" closes on July 8, 2015. Municipalities that file declaratory judgment actions during this time will be given a maximum of five months to submit their third round housing elements and fair share plans.

The Supreme Court confirmed that municipalities are obligated to satisfy in full the "prior round" obligation from 1987 to 1999. Therefore, a municipality must submit an affordable housing compliance plan that addresses its affordable housing obligations from 1987 through 2024. The Court confirmed that municipal third round obligations are to be determined based upon the prior round (1987–1999) methodology as set forth in *N.J.A.C. 5:92–1et seq.*

The Supreme Court's decision applies to every municipality in New Jersey, including those that received substantive certification of a prior third round plan and municipalities that only participated in the COAH process. A municipality that did not receive substantive certification will be provided less deference and a more qualified immunity period than those that have a certified plan.

Finally, the Court's decision does not preclude COAH from "re-emerging" and assuming control of municipal compliance. However, COAH must first adopt compliant regulations, which will undoubtedly be subject to further litigation. In the meantime, the Supreme Court has established a path forward for municipalities and housing advocates to resolve the impasse as to required affordable housing needs.

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Commonwealth Court Restricts Mulching

By Robert W. Gundlach, Jr.

In *Tinicum Township v. Nowicki*, the Pennsylvania Commonwealth Court held, in a four to three opinion, that a mulching operation does not qualify as an agricultural operation or a forestry activity entitling it to protection under the Municipalities Planning Code (MPC) and/or the Right to Farm Act.

The *Nowicki* case involved a three-acre property formerly used as a quarry and located in the township's extraction zoning district. The applicant hauled in raw materials, including tree stumps, yard waste and logs to the property, with some similar materials being brought in by third party landscapers. The applicant processed these materials into mulch using a tub grinder, then delivered the finished mulch offsite to third party users.

The court first addressed the applicant's argument that its mulching operation was protected as an agricultural or forestry use under the MPC. Specifically, Section 603 of the MPC limits the restrictions that a zoning ordinance may set on agricultural and forestry uses as follows:

> Zoning ordinances may not unreasonably restrict forestry activities. To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout this commonwealth, forestry activities, including but not limited to, timber harvesting, shall be a permitted use by right in all zoning districts in every municipality.
>
> Zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to an expansion of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct adverse effect on the public health and safety. Nothing in this subsection shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the Right to Farm Act.

Accordingly, if the mulching operation qualified as a forestry activity or an agricultural operation, then it would be protected by Section 603 of the MPC.

Unfortunately for the applicant, the Commonwealth Court, in determining whether the mulching operation fell within either of these two categories, interpreted the words in the MPC, using prior case law, to hold that the mulching operating did not qualify as "agricultural operation" or "forestry activity" as those terms are defined and protected under the MPC.

The court next addressed the applicant's argument that the mulching operation fell within the protection of the Right to Farm Act and the Agricultural Code. Specifically, Sections 313(a) of the Agricultural Code provides that local governments may not adopt or enforce "unauthorized local ordinance" which is defined, in part, as an ordinance that restricts or limits the ownership structure of a normal agricultural operation.

Section 312 of the Agricultural Code incorporates the definition of "normal agricultural operation" from Section 2 of the Right to Farm Act, which defines that term, in relevant part, as follows:

> The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities is:
>
> 1. not less than 10 contiguous acres in area; or
> 2. less than 10 contiguous acres in area but has an anticipated yearly gross income of at least $10,000.

The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store and prepare crops for marketing and those items of agricultural equipment and machinery defined by the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.

The applicant argued that their mulching operation met the definition of "normal agricultural operation." Unfortunately for the applicant, the Commonwealth Court did not agree.

It is important to note that the majority opinion interpreted the above-referenced statutes based upon the fact that the raw material from which the mulch was made did not originate from the property and that none of the mulch was used on the property. This was a very important point in the majority opinion. In essence, the majority opinion adopted the trial court's position that the applicant's mulching operation was a "manufacturing" activity and, as such, was only permitted in the township's manufacturing zoning district.

In a very well written dissent, Judge Mary Hannah Leavitt, joined by Justices Simpson and McCullough, disagreed with the majority's opinion and opined that they would have reversed the trial court and held that the mulching operation was protected under the Pennsylvania Supreme Court's holding in a 1958 case, concerning the production of synthetic compost for growing mushrooms, known as *Gaspari v. Board of Adjustment of Muhlenberg Township*. In summary, the dissent found the facts in the subject case to be "right on point" with the facts contained in the *Gaspari* case, where the Pennsylvania Supreme Court found that the production of synthetic compost was not a manufacturing operation and permitted as an agricultural operation. Most importantly, the dissent noted that nothing in the MPC or the Right to Farm Acts specifically requires that forestry activity use trees from the property or use the product of that activity on the property.

The Pennsylvania Supreme Court denied the applicant's petition to hear this case. Nevertheless, the case seems to leave open the question of whether, when an applicant uses some amount of trees from the subject property to create their mulch and/or uses some portion of the completed mulch product on their property, if the mulching activity would then be protected under the MPC or the Right to Farm Act.

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Philadelphia OPA Relaxes and Clarifies Requirements for Tax-Exempt Real Property Owners/City Council Continues Its Efforts

By William F. Martin

Owners of exempt real estate in Philadelphia were surprised in January of this year to receive notices from the Office of Property Assessment (OPA) requiring both the completion of paperwork confirming the tax-exempt use of real estate, along with submission requirements, including organizational charters and by-laws, income expense statements, statements of assets and liabilities, descriptions of fundraising activities and other materials. The form was requested for each exempt parcel, and the communication from OPA was murky regarding whether or not there was a requirement for multiple copies of requested information for those entities that owned more than one parcel.

This effort by OPA to audit tax-exempt properties had been authorized by Ordinance Number 130123, which had been passed by the city council and then signed into law on June 13, 2013. The ordinance was passed in response to concerns that some parcels were enjoying tax-exempt status even though a change of circumstance should have resulted in the parcel becoming taxable.

However, once OPA took action, the members of the city council heard from a range of non-exempt property owners, particularly members of the clergy. These constituents complained that the OPA submission requirements were burdensome and unnecessary. In response, Councilman David Oh introduced Bill Number 150149, which significantly pared back the information requirements OPA could impose in connection with its audit of exempt parcels. Facing a high likelihood that the proposed legislation would pass, OPA made a strategic retreat and revised its submission requirements. As complaints from church groups continued, on March 26, 2015, the city council passed Bill Number 150144, which eliminated all recertification submission requirements. As this update is written, it is unclear whether the mayor will sign the new law or whether he and the council will reach a compromise approach.

In response to the legislative efforts, OPA has extended from March 31, 2015, to June 1, 2015, its deadline for responding to the audit information request. Pending Bill Number 150144 becoming law, either by way of the mayor's signature or a veto override, owners are required only to submit a copy of the OPA form with answers to the questions on its first page, along with a copy of the IRS determination letter confirming Section 501(c)(3) tax-exempt status under the Internal Revenue Code. The lengthy list of additional documents, which had been required, can now be ignored. Taxpayers are still required to explain how they utilize each of their tax-exempt parcels while disclosing any income received from each of the parcels.

If an organization with which you are familiar believes it enjoys tax-exempt status for its Philadelphia property and has not received the forms described above, a representative of the organization should contact the OPA. If you need assistance with completing the paperwork, confirming how the law has evolved after March 31, 2015, or any other aspect of the process, please contact William Martin at 215.299.2865 or Reuben Asia at 215.299.2190.

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Legislative Update In Pennsylvania

By David H. Comer

Senate Bill No. 3 proposes to create the "Medical Cannabis Act," which would provide for the medical use of cannabis within the Commonwealth of Pennsylvania.

At this point, you may be asking why I am writing about this proposed legislation in this particular newsletter. Well, the "Medical Cannabis Act" includes a section that addresses location and zoning in connection with the growing, processing and dispensing of medical cannabis.

The proposed legislation provides the following general rule: "Except as otherwise provided under this act, each grower, processor and dispenser license shall be valid for the specific physical location within the municipality and county for which it was originally granted. A person may not distribute medical cannabis from a location other than a licensed facility."

The proposed legislation addresses zoning as follows: (i) the growing of medical cannabis shall be classified as a normal agricultural operation pursuant to the Right to Farm Law, (ii) facilities for the manufacturing, preparation and production of medical cannabis shall meet the same municipal zoning and land use requirements as other manufacturing, preparation and production facilities and (iii) facilities for the dispensing of medical cannabis shall meet the same municipal zoning and land use requirements as other commercial facilities.

As for the status of Senate Bill No.3, it has not yet been passed. After Senate Bill No. 3 was introduced, it was referred on January 26, 2015, to state government, where it remains.

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Property Owners Be Warned: Your Property May Be Downzoned To Preserve Open Space

By Henry Kent-Smith

In *Griepenburg v. Township of Ocean*, 220 N.J. 239 (2015), the New Jersey Supreme Court upheld a down-zoning to one home per 20 acres in the Township of Ocean, Ocean County. The New Jersey Supreme Court continues its relaxation of the proof requirements necessary for a municipality to justify large lot environmental preservation zoning. Once again landowners are shouldering the loss of virtually their entire land equity, without any compensation, as New Jersey municipalities and the New Jersey Department of Environmental Protection (NJDEP) seek to preserve environmentally sensitive land. The *Griepenburg* decision continues the erosion of *Pheasant Bridge v. Warren Township*, 169 N.J. 282 (2001), which established the proof requirements necessary for a municipality to sustain large lot zoning as applied to a particular parcel.

The Griepenburg's property is adjacent to Exit 69 on the Garden State Parkway at Route 532. To the rear of the Griepenburg's property is a large senior development. Farther to the east are single-family residential homes and the gateway into Waretown. The Griepenburg property had initially been included in the proposed Waretown Town Center. The Watertown Town Center was a CAFRA center designation that would permit development at intensities indicative of center-based development. Initially, the Township envisioned a scale of town center that would enable Waretown to expand to the Parkway. The Griepenburg property was included in this draft center designation. Toward the end of the center designation process with the Office of State Planning, the NJDEP objected to the size and extent of development within the proposed center.

Large areas between Waretown and the Garden State Parkway constituted a contiguous forested area that was suitable habitat for threatened and endangered species. The NJDEP required Ocean Township to reduce the size and scale of the proposed town center in order to enable preservation of these contiguous forested areas. As a result of the NJDEP's objection, the Township agreed to reduce the Waretown Town Center by eliminating any expansion of the center into this forested area. Once the Township agreed to limit this expansion potential, NJDEP approved the CAFRA center designation for the "scaled back" Waretown Town Center.

The Griepenburgs were caught in this policy dispute, as their property was largely undeveloped forested area. Once taken out of the Waretown Town Center, the Griepenburg property was placed into an environmentally sensitive plan designation (Planning Area 5), and the township zoning was amended to effectuate this environmental preservation policy. A density of one unit per 20 acres was adopted, effectively limiting the Greipenburgs to their existing homestead and wiping out prior commercial zoning along their Route 532 frontage.

The trial court upheld the Township's efforts, holding that the one unit per 20 acre designation was substantially increasing environmental preservation, notwithstanding the fact that no specific environmental areas of concern were located on the Griepenburg property. The Appellate Division reversed, citing *Pheasant Bridge v. Warren Township* 169 NJ 282 (2001), which established the requirement that there be a nexus between the environmental conditions being sought to be preserved and the underlying zoning. The Supreme Court upheld the trial court, holding that the Appellate Division extended *Pheasant Bridge* beyond its intended holding. Instead, the Supreme Court found the trial court's findings of fact sufficient to authorize the municipal action and upheld the down-zoning of the Griepenburg property for preservation purposes.

What is lost in this process is a very fundamental and simple proposition: that the Fifth Amendment of the United States Constitution and the First Amendment of New Jersey's constitution prohibit the taking of private property for public uses without the payment of just compensation. More New Jersey landowners who failed to "bailout" and sell to developers are now being penalized and forced to preserve their property for open space purposes for the benefit of the public, without any payment of just compensation. Down-zoning of the magnitude as experienced by the Griepenburgs constitutes a "wipe out" of equity, leaving the Griepenburgs with no residual value to their property except as a homestead.

In addition, the *Griepenburg* court established a requirement for the exhaustion of administrative remedies on any "as applied" challenge to a zoning ordinance, where the "taking" claim is inclusive of the challenge to the validity of the underlying zoning ordinance. The Supreme Court viewed the use variance process as an administrative remedy that must be pursued prior to the institution of an "as applied" zoning challenge. The Supreme Court's holding is troubling, as it fails to address almost 30 years of jurisprudence regarding commercial use variances. *Medici v. BPR*, 107 N.J. 1 (1986). Use variances are not designed to usurp the municipal legislative power to zone. However, it appears that the use variance process may now be required to be followed, even where the landowner is only seeking a fair and equitable zoning, and not a particular development proposal.

The *Griepenburg* decision is alarming for property owners, particularly farmers, who continue to face a relentless assault on their land equity in the face of environmental and open space preservation efforts.

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Q&A With Fox Rothschild Partner Carl Anthony Maio

By Carl Anthony Maio

Q: I recently read your article from the January 2015 issue of *In the Zone* regarding certificates of insurance and landlord /tenant /buyer being added as additional named insured. The landlord and or tenant or buyer/seller can be added as additional insureds but adding them as additional named insureds would require proof of commonality. Could you please elaborate on the distinctions between additional insureds and additional named insureds?

A: Thank you for your comment about the *In the Zone* article on Certificates of Insurance. The two principles intended to be addressed are the propositions that: (1) Certificates of Insurance require more than just naming a party or entity as a Certificate Holder, and (2) an affirmative undertaking must be made for defense and indemnity. Insurance industry-accepted and judicial case law-tested terms are a good place to begin.

An "additional insured" is a person or organization not automatically included as an insured under an insurance policy but for whom insured status is arranged, usually by endorsement. A named insured's impetus for providing additional insured status to others may be a desire to protect the other party because of a close relationship with that party or to comply with a contractual agreement requiring the named insured to do so. A good example is an owner of property leased by the named insured. This is the most common approach accepted by underwriters.

An "additional named insured" (ANI) is a person or organization, other than the first named insured, identified as an insured in the policy declarations or an addendum to the policy declarations. An ANI is added to a policy after the policy is written with the status of named insured. This entity would have the same rights and responsibilities as an entity named as an insured in the policy declarations. The contrast between the two is that the person or organization is added to a policy as an insured but not as a named insured. The test is "insurable interest," which is in the value of the subject of insurance, including any legal or financial relationship resulting from property rights, contract rights and potential legal liability. This also allows the ANI to be placed on notice by the underwriter if the policy is cancelled, changed or premiums have not been paid. This is customarily accomplished by a policy endorsement and explains the cautionary language in the pre-printed Acord Form.

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Big Changes to Bucks County Plan Recording

By Jessica L. Rice

The office of the Bucks County Recorder of Deeds, in conjunction with the Bucks County Planning Commission, has implemented a new system of recording subdivision plans electronically.

Electronic plan recording began February 1, 2015, with the intent of simplifying the process of having plans recorded. Once a plan is approved, signed by the owner(s) and the municipality and ready to be recorded, a scanned digital version should be submitted to the recorder of deeds office. The recorder of deeds will then send the digital file to the Bucks County Planning Commission for electronic signature. Scanned digital plans can be submitted by the municipality or by a third party, so long as that is done through one of the three e-file companies utilized by Bucks County: Simplefile, Land Data or CSC. If a record plan is submitted to the Recorder of Deeds on paper rather than electronically, the recorder's office will scan and send it electronically to the planning commission. Because the Bucks County Planning Commission will digitally sign the record plans, paper copies will no longer be required for the planning commission, or for the Recorder of Deeds office. Plans will simply be recorded as electronic files.

Note that the process of review and approval of plans at the municipal level does not change as a result of this new electronic filing procedure, and local municipalities may still require paper and mylar copies of the plans for themselves or their consultants. As anyone who has recorded plans in Bucks County is aware, many municipalities require that record plans contain a Bucks County Planning Commission signature before the municipality will sign record plans. All Bucks County municipalities have been advised by the planning commission that the municipalities should not impose such a requirement, given the new recording procedures.

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Approvals

- Kimberly A. Freimuth obtained variances from the Lansdale Borough Zoning Hearing Board relating to front yard setback and lot width to allow the construction of a single-family dwelling on a lot.
- Kimberly A. Freimuth obtained a use variance from the Warminster Township Zoning Hearing Board to allow a banquet/catering facility within an industrial zone.
- Kimberly A. Freimuth obtained conditional use approval from the East Fallowfield Township Board of Supervisors, as well as a variance and special exception from the East Fallowfield Township Zoning Hearing Board, to allow co-location on an existing wireless telecommunications facility.
- Jennifer L. Wunder obtained variances from the Northampton Township Zoning Hearing Board relating to side yard setback to allow the construction of an in-law suite and attached garage as an addition to an existing single-family dwelling.
- John Grossman recently obtained preliminary and final major site plan approval, with variance relief and submission waivers, in New Jersey to permit the expansion of a food processing facility.

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