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In the Zone

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Tax Assessment Appeals: What Is the STEB Ratio (Common Level Ratio)

by Herbert K. Sudfeld, Jr

The Pennsylvania Constitution in Article 8, section 1, provides that "all taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under the general laws."

"The Pennsylvania Supreme Court has held that in order to comply with this constitutional mandate, taxes must be applied uniformly upon similar types of property, with substantial equality of the tax burden to all members of the same class." *Goodman, Assessment Law and Procedure in Pennsylvania at 201, citing Brooks Building Tax Assessment case*, 391 PA 94, 137 A. 2d 273 (1958).

The State Tax Equalization Board (STEB) establishes a "common level ratio" or STEB ratio each year pursuant to the State Tax Equalization Board Law. This ratio is a statistical calculation performed by the STEB to determine an average ratio of assessed value to current market value of real property within a given county. The data used is gathered from records of sales in the county during the prior calendar year. Boards of Assessment Appeals and the courts are authorized to accept the STEB's determination of the county's common level ratio.

The common level ratio (STEB ratio) must be used to determine assessed market value when the STEB ratio varies by more than 15 percent from the established predetermined ratio in the county. The "established predetermined ratio" is the ratio of assessed value to market value established by the Board of County Commissioners and uniformly applied in determining assessed value in any year.

Suffice it to say that most counties use the STEB ratio to determine assessed market value and accept its application on the part of appellants when appealing.

How do you apply the STEB ratio to figure your assessed value? Suppose your assessment is 50,000 and the STEB ratio in your county is 10.9%. You would divide 50,000 by .109 (10.9%) and the result ($458,715.59) would be the assessed value of your property for that year. If your actual market value (as shown by appraisal or comparable sales) is less than the assessed value by say 10 to 15 percent, then you should appeal your assessment and hope for a reduction. Obviously, if your real market value is higher or you are not sure of your market value, you should not appeal. Once an appeal is filed, it opens the door for the Board of Assessment to review your entire assessment, and your assessment could be raised to match your actual market value if it is more than the assessed value. If you are not sure, please feel free to call me to discuss your options.

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EPA Extends Deadline for Lead Paint Certification

By Carrie B. Nase

On June 18, 2010, the EPA issued a memorandum effectively extending the deadlines for professionals to comply with the lead paint certification aspects of the Renovation, Repair and Painting Rule.

The new directive gives remodelers until October 1, 2010, to file for firm certification, until September 30 for workers to register and until December 31 for workers to take the required training course.

However, workers will still be required to use lead-safe work practices during this time. And the EPA will continue to enforce work practice requirements to ensure all contractors are implementing such practices.

For more general information concerning the EPA's lead based paint rules and regulations, please visit EPA's lead web site.

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PADEP's New E&S/Stormwater Regulations Have Important Exceptions for Brownfield Redevelopment Projects

By M. Joel Bolstein

The new Chapter 102 regulations relating to erosion and sedimentation (E&S) controls and stormwater management were approved by the Independent Regulatory Review Commission (IRRC) on June 17, 2010. In our most recent edition of *In the Zone*, we reviewed the burdensome requirements those regulations will impose on developers, including developing and implementing post-construction stormwater management (PCSM) plans and creating riparian stream buffers. Those new regulations are now on the fast path to becoming law in the Commonwealth by the end of the year, and they will go into effect 90 days after being published in the *Pennsylvania Bulletin*.

If you take a close look at the regulations and the accompanying 471-page comment/response document, you will see that the Environmental Quality Board (EQB) has slipped in a number of exceptions to ensure the regulations do not adversely impact brownfield redevelopment in Pennsylvania. On page 264 of the comment/response document, one commenter asserted the proposed regulations would "potentially present a significant disincentive to brownfield redevelopment in the Commonwealth." The commenter noted the proposed regulation would adversely impact brownfield developers who took the initiative and started preparing the site for re-use (such as by demolishing buildings), before the stormwater permitting and PCSM compliance obligations kicked in at the time of earth disturbance. In response, the Department agreed that "flexibility is needed" on brownfields sites. As a result, it revised Section 102.8(g)(2)(ii) and (iii) of the final regulations. Section 102.8(g) is the subsection that sets forth the criteria to be applied in performing the PCSM plan stormwater analysis. Section 102.8(g)(2)(iii) states as follows:

> (iii) When the existing site contains impervious area and the existing site conditions have public health, safety or environmental limitations, the applicant may demonstrate to the Department that it is not practicable to satisfy the requirement in (ii), but the stormwater volume reduction and water quality treatment will be maximized to the extent practicable in order to maintain and protect existing water quality and existing and designated uses.

The first thing I see in that subsection that helps brownfield redevelopers is the notion a site may have existing "public health, safety or environmental limitations" that impact the ability to manage post-construction stormwater. Many brownfield sites have contamination under an asphalt cap or concrete, and it is in everyone's interest to leave that undisturbed. Presumably that would be seen as an "environmental limitation." So for example, let's assume a brownfield developer wants to buy an old abandoned corner gas station and turn it into a bank or a drugstore. The site soils are contaminated and are covered by the existing parking lot. The developer plans on maintaining that cap to limit direct exposure to the soil contamination. It would appear Section 102.8(g)(2)(iii) of the new regulations would allow that brownfield redeveloper to avoid having to comply with the otherwise one-size-fits-all post-construction stormwater volume reduction requirements or design the stormwater BMPs for the two-year/24-hour storm event, provided it demonstrates stormwater volume will be reduced for the completed brownfield development "to the extent practicable." What that means, I do not completely know. I am not even sure the Department knows at this point. Practicability is a concept that puts an enormous degree of discretion in the hands of the Department. Since the Department carved out this exception for brownfield projects, one would hope they would use that discretion as a means of facilitating brownfield redevelopment and not be too rigid in applying the subsection.

In the comment/response document, the Department also notes that Section 102.14(d)(2(v) provides a waiver for brownfield redevelopment projects from the new riparian buffer requirements. As support for the regulation, the EQB found that "riparian buffers are one of the most cost effective stormwater management BMPs." The new regulations require the creation of riparian buffers to protect exceptional value (EV) and high quality (HQ) waters. Under Section 102.14(a), a person may not conduct earth disturbance activities within 150 feet of a perennial or intermittent river, stream or creek, or lake, pond or reservoir, where the project site is located in an EV or HQ watershed attaining its designated use as listed by the Department at the time of application and he/she is required to protect any existing riparian buffer in that circumstance. Where the site is in an EV or HQ watershed where there are waters failing to attain one or more designated uses and the project site is along or within 150 feet of a perennial or intermittent stream, then the person must protect any existing riparian forest buffer, or convert an existing riparian buffer to a riparian forest buffer, or establish a new riparian forest buffer. The brownfield waiver to the riparian buffer requirement is found in Section 102.14(d)(2). The exception reads:

> (d)(1) The requirements of 102.14(a) do not apply for earth disturbance activities associated with the following:
>
> (2) For earth disturbance activities associated with the following, the Department, or the Conservation District after consultation with the Department, may grant a waiver from any of the requirements of 102.14(a) and (b) upon a demonstration by the applicant that there are reasonable alternatives for compliance with this section, so

long as any existing riparian buffer is undisturbed to the extent practicable and that the activity will otherwise meet the requirements of this Chapter:

(v) Redevelopment projects which include brownfields or use of other vacant land and property within a developed area for further construction or development;

In order to invoke the brownfield waiver, a brownfield redeveloper has to submit a written request for the waiver to the Department or the Conservation District as part of the application for the NPDES Stormwater Construction permit. The new regulation also allows for anyone claiming the waiver to propose "in-lieu of compensation to fund riparian forest buffer protection, enhancement or establishment."

So what does all of this mean for brownfield redevelopers? Well, let's assume you are a brownfield redeveloper and are looking to buy an old vacant factory that sits on 20 acres and has a stream running through it and is located in an EV or HQ watershed. Without the brownfield waiver, you would have to create a riparian buffer of 150 feet on both sides of the creek. That would cut back significantly on the land area available for the brownfield development project, and it might dissuade someone from acquiring that abandoned site. Presumably, the brownfield waiver was put in the Chapter 102 regulations to recognize that brownfield sites require special incentives, not disincentives, in order to encourage their productive reuse.

In my hypothetical, the developer would be eligible to seek a waiver upon written request "as part of the application for a permit" under Chapter 102. But that is the rub. The brownfield redeveloper will not know a waiver will be granted until they apply for a permit. That means the Department will not likely be telling the brownfield redeveloper whether the site will receive a waiver from the riparian buffer requirement at any time prior to the site being purchased. They also will not likely be telling that developer in advance of the purchase whether any payment in lieu of the riparian buffer will be required. That could be a significant enough risk to still deter the potential brownfield redeveloper if that extra site area is important to the viability of the project. What I can see happening for those sites is a scenario as follows:

(1) Developer identifies a vacant abandoned industrial site;

(2) Developer wants some certainty regarding the area available for redevelopment so it enters into a cooperation agreement with a county redevelopment authority or economic development corporation;

(3) The county RDA or EDC acquires the site;

(4) The county RDA or EDC files an application for a stormwater construction permit, requesting the waiver from the riparian buffer requirement under Section 102.14(d)(v); and

(5) If the Department or the Conservation District grants the waiver, the developer moves forward and takes title to the property and proceeds.

I am sure there will be other ideas that brownfield redevelopers will come up with, but that is one I have worked with on a number of projects where the brownfield site requires assessment grant or remediation grant funding and the RDA or EDC is the conduit for the state or federal funding. I believe that structure could be adapted to work in the circumstances of a brownfield site potentially triggering the need for a riparian buffer.

So for brownfield redevelopers, there is some good news buried in the final Chapter 102 regulations and the accompanying 471-page comment/response document.

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PA Department of L&I Responds to Permit Extension Act

By Robert W. Gundlach, Jr.

On July 6, 2010, Pennsylvania Governor Edward Rendell signed into law Senate Bill 1042, which extended various land development and building permits. The law took effect immediately.

Article XVI-I of the bill contains a requirement that the validity of a wide variety of permits, including UCC building permits, which are issued or in effect during the period December 31, 2008, through July 2, 2013, shall be extended during this period.

34 PA Code §403.43 (g) and §403.63 (g) require permitted work to begin within 180 days of the issuance of the building permit and do not allow the work, once begun, to be abandoned for a period of more than 180 days. The regulation also provides that work must be completed within five years of issuance of a building permit.

In a communication from the PA Department of Labor and Industry, the Department confirms that permit extension law automatically suspends these requirements during the period December 31, 2008, through July 2, 2013.

Additionally, the Department offered two points of clarification on Senate Bill 1042, which contains a requirement that the validity of UCC building permits, which are issued or in effect during the period December 31, 2008, through July 2, 2013, shall be extended during this period.

It is the Department's position that if someone has a residential building permit issued under the 2006 code and that permit was in effect on January 1, 2009, but has since expired, this permit is subject to the automatic extension and is therefore valid until 2013. Why? Because the automatic suspension language in section 1603-I (A) refers to an approval by a government agency "granted for or in effect during the extension period," the implication would seem to be that if the permit was in effect on January 1, 2009, then it would be subject to the extension, regardless of when it expired.

The section on permit extensions speaks to "government approvals." Under the UCC, local permit approvals are technically issued by Building Code Officials. These code officials might be employees of the municipality or they might be persons who work for certified third-party agencies that have been retained (i.e., contracted with) by the municipality. Nonetheless, the permits they issue are municipal (i.e., government) approvals, and thus the SB 1042 suspension requirement applies to all UCC permits.

On August 6, the PA Department of Environmental Protection and the Department of Community and Economic Development issued guidance on the permits and approvals covered by the law.

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The Pendulum Swings on Procedural Challenges: *Messina v. East Penn Twp.*, — A.2d —, 2010 WL 2105119 (Pa. Commw. 2010)

By Clair E. Wischusen

In *Messina*, the Commonwealth Court affirmed the decision of the trial court in declining to declare a zoning ordinance void *ab initio* under the legislature's new multitiered standard for procedural challenges.

The process for enacting a zoning ordinance under the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101, et seq., (the MPC) is complex with detailed rules concerning notice and procedure. If a municipality fails to strictly comply with these procedural requirements, an applicant can file a procedural challenge to the validity of the ordinance within 30 days of its purported enactment. 53 P.S. 10909.1.

In *Schadler v. Zoning Hearing Bd. of Weisenberg*, 850 A.2d 619 (Pa. 2004) and *Glen-Gery Corp. v. Zoning Hearing Bd. of Dover Twp.*, 907 A.2d 1033 (Pa. 2006), the Pennsylvania Supreme Court held that procedural defects implicate due process and render a zoning ordinance void *ab initio* such that the 30-day statutory time limit on procedural challenges does not run. As such, in *Schadler* and *Glen-Gery*, applicants were able to successfully challenge the procedural validity of zoning ordinance many years after their initial enactment.

In 2008, the Pennsylvania General Assembly amended Section 5571.1 of the Judicial Code to implement a multitiered standard for procedural challenges in which the burden of proof increases as time passes. 42 Pa.C.S. § 5571.1. Specifically:

- If an appeal is brought within the initial 30-day time limitation, the challenger must only prove a failure to "strictly comply" with statutory procedures. Section 5571.1(e)(1).
- If an appeal is brought beyond the 30-day time limitation, the challenger must establish that application of the 30-day limit would result in an impermissible deprivation of constitutional rights. Section 5571.1(c). In such cases, the challenger has the additional burden to prove the failure to strictly comply with statutory procedures resulted in insufficient notice to the public of proposed changes to the zoning ordinance, so that the public would be prevented from commenting upon changes, intervening or having knowledge of the ordinance's existence. Section 5571.1(e)(2).
- If two years have passed since the ordinance's intended effective date, the challenger must also establish facts sufficient to rebut a presumption in subsection (d)(2) that the municipality and its residents have substantially relied upon the validity and effectiveness of the ordinance. Section 5571.1(e)(3).

The challengers in *Messina* sought to invalidate the initial enactment of a zoning ordinance in East Penn Township (the Township) that prevented the expansion of a mining and excavation operations located in the Township's rural and rural residential zoning districts. Essentially, the challengers sought to invalidate the zoning ordinance on the basis that the ordinance that was adopted differed from the ordinance that was advertised and sent to the county planning commission in that it amended the boundary line between the business commercial and village commercial zoning districts. The trial court determined because the amendment to the boundary line was made on the night of adoption, it was clear the Township did not submit the final version of the ordinance to the County Planning Commission at least 45 days prior to enactment. Thus, the trial court determined that the Township violated the strict requirements of Section 607(e) of the MPC in failing to submit a final version of the zoning ordinance, including all amendments to the County Planning Commission at least 45 days prior to the enactment of the zoning ordinance. See 53 P.S. § 10607(e).

Nevertheless, observing that the challengers filed their challenge more than 12 years after enactment of the zoning ordinance,

the trial court concluded the challengers failed to satisfy the heightened burden of proof under Section 5571.1(e) to prevail. In addition, the trial court found the challengers failed to present any evidence to rebut the presumption in Section 5571.1(d)(2) that the Township and its residents substantially relied on the validity and effectiveness of the zoning ordinance. As a result of this presumed substantial reliance, the trial court held the procedural challenge was time-barred.

The trial court also rejected the challengers' assertion that they were exempt from any time limitation on the grounds they were denied due process. The trial court found the amendment to the proposed amendment only affected the location of the boundary line between the village commercial and the business commercial zoning districts within a certain subdivision. Noting the challengers' quarry was not located in either the business commercial or the village commercial zoning districts, the trial court concluded the challengers failed to prove their property was affected in any way by the amendment or they had an interest in the amendment beyond a general interest attributable to any citizen in the Township. Accordingly, the trial court held the challengers were without standing to challenge the amendment procedure on due process grounds. For all these reasons, the trial court denied the challengers' procedural challenge.

On appeal to the Commonwealth Court, the challengers asserted the trial court erred in improperly applying the provisions of Section 5571.1 of the Judicial Code. The challengers contended that by attempting to impose unreasonable and illogical burdens and presumptions on a challenger, the General Assembly attempted an "end-run" around the Supreme Court's decision in *Glen-Gery*.

The Commonwealth Court rejected the challengers' argument and upheld the trial court's application of the new multitiered standard in Section 5571.1. The Commonwealth Court found the heightened standard properly responded to concerns expressed in *Schadler* and *Glen-Gery* over the possible excesses of the void *ab initio* doctrine. Specifically, the Commonwealth Court found Section 5571.1 synthesized dicta in *Glen-Gery*, which stated a lapse of time coupled with some indication that persons interested in land use in a municipality have obeyed the ordinances purported to have been enacted, would suffice to support a decision electing not to apply the void *ab initio* doctrine despite evidence of defects in the enactment process.

Accordingly, the Commonwealth Court affirmed the order of the trial court that applied Section 5571.1 in declining to declare the zoning ordinance void *ab initio*.

The *Messina* decision leaves open whether procedural challenges raised beyond the 30-day time limit are effectively dead under the General Assembly's new heightened standard, especially when such challenges are brought more than two years after the intended effective date of a zoning ordinance.

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Proposed Legislation in Pennsylvania

By David H. Comer

In the June issue of *In the Zone*, I wrote about House Bill No. 2431, which proposes to amend Section 1 of Article IX of the Constitution of the Commonwealth of Pennsylvania to reorganize local government with a county basis. The proposed legislation, which would establish the county "as the basic unit of local government," has not been well received.

By way of background, there currently are more than 2,500 municipalities in Pennsylvania; there are 67 counties. Representative Thomas Caltagirone of Berks County introduced the proposed legislation, which would provide the county as the basic unit of local government with jurisdiction over: (1) personnel, (2) law enforcement, (3) land use, (4) sanitation and (5) health and safety.

According to an article that appeared July 18, 2010 in *The Intelligencer Journal* (Lancaster, Pa.), Caltagirone said it would be "difficult to imagine a system less efficient and more costly" than the current system. So, Caltagirone said, he proposed the bill to "prompt a serious discussion." According to the article, few municipalities want to discuss his proposed bill, although several have passed resolutions opposing it.

A public hearing on the bill has been scheduled for 10 a.m. on August 18 in Harrisburg.

Caltagirone told *The Intelligencer Journal* he expects his critics will come to the public hearing "loaded for bear." "It's like I'm the devil incarnate," he told the newspaper. "But all I'm saying is: Wouldn't this make sense?"

Caltagirone also told *The Intelligencer Journal* he does not expect the bill to pass. However, it will be interesting to see whether the proposed bill leads to the "serious discussion" Caltagirone hoped it would when he introduced it.

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New Home Appraisal Rules Take Effect

By Clair E. Wischusen

According to the National Association of Home Builders, on June 30, Fannie Mae released new appraisal-related policies and additional guidance addressing many of the concerns raised with the agency regarding inappropriate appraisal practices. According to its new policy, Fannie Mae will now require lenders to only use appraisers who have the appropriate knowledge and experience in specific geographic markets. Also, builder sales are acceptable as comparable properties, and an appraiser may view the HUD-1 for a new construction property to verify a recent sale not yet available through other data sources.

Meanwhile, Fannie Mae is requiring appraisers to make valuation adjustments for short sale and foreclosed properties used as comps by determining their condition and whether any stigma is associated with them. Other changes announced by Fannie Mae clarify that the Home Valuation Code of Conduct allows for appropriate communication with appraisal management companies and specific appraisers and also allows for authorized third parties, including builders, to provide additional information about the basis for a valuation or the need to correct objective factual errors in an appraisal report.

The NAHB Business Management & Information Technology and Housing Finance committees will host a free webinar called "A Builder's Guide to Appraisals: Obtaining Accurate Valuations on New Homes," on Wednesday, Aug. 4, from 2 to 3 p.m. EDT. This event will feature home builders and appraisal practitioners discussing the new appraisal rules and providing advice on what builders can do to improve the accuracy of home valuations. To register for the webinar, click here.

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Weston v. Zoning Hearing Bd. of Bethlehem Twp., 994 A.2d 1185 (Pa. Cmwlth. 2010)

By Carrie B. Nase

This case involved a landowner who rented rooms in her home to college students. The zoning officer considered this use to be a "boarding home," which is not permitted in the zoning district. The landowner filed an application with the Zoning Hearing Board (ZHB) for an interpretation. The ZHB issued public notice of its intent to hold a hearing on the landowner's application, pursuant to Section 908(1) of the Pennsylvania Municipalities Planning Code (MPC). In addition, the zoning ordinance required that written notice of the hearing be mailed to property owners within 400 feet of the subject property.

At the hearing, the zoning officer testified that the advertisement of the public notice included a typographical error that identified the landowner's address as 3214, rather than 3215. The landowner's attorney confirmed that individual notice was sent by U.S. mail to property owners within the requisite area and no envelopes were returned as undeliverable. The ZHB determined that the notice requirements were met and proceeded with the hearing. The ZHB issued a written decision in favor of the landowner. Appellants filed an appeal to the ZHB's decision raising both procedural and substantive errors, asserting (1) they did not receive written notice of the ZHB hearing in accordance with the zoning ordinance, (2) there was no record evidence to show the ZHB complied with the public notice requirements in Sections 107 and 908(1) of the MPC, and (3) the notice was defective on its face because it contained a numerical error.

In response to the appellants' appeal, the ZHB alleged the appellants lacked standing to bring the appeal since they were not parties before the ZHB. The appellants argued they had standing pursuant to Section 1002.1-A of the MPC, which applies "to all appeals challenging the validity of a land use decision on the basis of a defect in procedures prescribed by statute or ordinance." 53 P.S. § 11002.1(A). Therefore, the appellants alleged their absence at the ZHB hearing was due to the township's failure to strictly comply with the proper procedure regarding notice under the MPC and zoning ordinance, the hearing was procedurally defective and the ZHB's decision was void *ab initio*. The trial court dismissed the appellants' appeal and determined the mailing list was in the record and the list included the appellants and contained no facial defects to support the appellants' claim they did not receive the notice. In addition, the trial court noted that, although the public notice was defective with respect to the landowner's address, it was otherwise proper.

On appeal, the Commonwealth Court affirmed the trial court's decision, noting the appellants have the burden of providing a failure to strictly comply with the notice procedure. The Commonwealth Court first rejected the appellants' argument that the submitted documents must be excluded from the record because they were not formally moved into evidence. The court noted the formal rules of evidence do not apply to ZHB hearings and the documents were marked as exhibits. Second, the court applied the "mailbox rule" in determining there was a presumption the mailed notice was received by the appellants. Lastly, the court rejected the appellants' argument that the notice did not strictly comply with the requirements set forth in the MPC since

the landowner's address was incorrect. The court relied on Section 107 of the MPC, which provides public notice "shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing." 53 P.S. § 10107. In addition, the court noted that neither the MPC nor the zoning ordinance require the property address be included in the notice. The court determined the public notice did comply with the requirements of the MPC and the typographical error was de minimis. Therefore, the appellants failed to meet their burden under Section 1002.1-A of the MPC.

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Lancaster Township v. Zoning Hearing Board of Lancaster Township
Pa. Commonwealth Court (May 27, 2010)

By Kimberly A. Freimuth

In this case, the Pennsylvania Commonwealth Court upheld its prior decisions in affirming that the parking of vehicles used in a residential landowner's business is commercial in nature and the storage of such vehicles is not permitted in residential zoning districts as it is neither incidental to nor customary in a residential area.

The landowner owned 62 acres of land in Lancaster Township, Butler County, where he operated an interstate trucking business. As part of the business, the landowner owned three tractors and four trailers that he used to transport freight. The landowner applied for a permit to build an 80-foot by 40-foot steel building to store the tractors and trailers and in which he planned to store farm equipment. During construction of the building, the landowner was notified by the township that parking the tractors and trailers in the building would violate the township's zoning ordinance, which prohibited commercial uses on residential property.

The landowner applied to the township Zoning Hearing Board seeking a use variance to permit the parking of the tractors and trailers in the building. After a hearing, the Board determined the landowner's proposed use of the building was a permitted accessory use under the township zoning ordinance. Thereafter, the township appealed the Board's decision, arguing the Board abused its discretion in granting the variance. The landowner intervened in the appeal.

The trial court found there was substantial evidence to support the Board's determination that the building and its use were permissible under the zoning ordinance. However, the trial court also found the Board abused its discretion in granting the use variance because there was no determination that an unnecessary hardship was not created by the landowner.

The township appealed the trial court's decision to the Commonwealth Court, arguing the Board abused its discretion by ignoring controlling precedent and the clear provisions of the ordinance in determining that a building located on residentially owned property and used to house a fleet of commercial vehicles in the operation of an interstate trucking business qualified as a private garage and/or an accessory use.

The Commonwealth Court held the trailers and trucks used by the landowner were so integral to his business that they were commercial in nature, and parking them in a residential area was neither incidental nor customary to their residential properties. In making this determination, the court relied on its prior decisions in *Taddeo v. Commonwealth,* 412 A.2d 212 (Pa. Commw. 1980) (holding the storage of equipment used in a landowner's asphalt business was neither incidental to, nor customary, in a residential area, and thus, was not an accessory use), *Galliford v. Commonwealth*, 430 A.2d 1222 (Pa. Commw. 1981) (holding the landowner violated the zoning ordinance by allowing his son to park his tractor trailer in the landowner's driveway because the tractor trailer was unquestionably commercial in nature and neither incidental nor accessory to the residential character of the property), *Dech v. Zoning Hearing Bd. of Lynn Township*, 512 A.2d 1352 (Pa. Commw. 1986) (holding that parking vehicles used in a residential landowner's business was commercial in nature and the storage of such vehicles was neither incidental to nor customary in a residential area) and *Reardon v. Zoning Hearing Bd. of Town of McCandless*, 756 A.2d 1108 (Pa. Commw. 1999) (holding the landowner who parked his commercial vehicle behind his home was operating a business by transferring commercial equipment to the property in violation of residential zoning ordinances).

The township also argued on appeal that the Board abused its discretion in ruling the use of a farm building to house a fleet of non-agricultural commercial vehicles was permitted as a matter of right in the agricultural district. Although the landowner argued the trucks that would be stored in the building would be used to transport hay and fertilizer, the main use of the trucks was not for farm-related purposes. Therefore, the court held it was not reasonable to consider their storage an agricultural use and, therefore, the court again found that the Board abused its discretion

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