



LOCAL GOVERNMENT COMMISSION

Quarterly Legal Update

Spring 2017

In the Commission's Spring 2017 Legal Update we have included some interesting state and federal cases, including a Pennsylvania Supreme Court decision providing guidance on municipal boundary disputes, and a Commonwealth Court decision exploring the timing of property assessments after a property has undergone new construction. Important changes to municipal law are also being developed in the General Assembly, including a bill modifying the procedure for declaring vacancies in townships of the second class and the continuing work on improving the assessment process and procedure through the Commission's Property Assessment Reform Task Force.

- Philip Klotz, Executive Director of the Local Government Commission

Legislative Updates:

Local Government Commission's Property Assessment Reform Task Force. Established by the Commission to facilitate development and implementation of remedies to address recommendations in recent House Resolution reports related to modernization, efficiency, transparency and fairness of the property assessment process in Pennsylvania. The next Task Force meeting is June 8, 2017.

SB 5, PN 758 & HB 671, PN 717. Amend Titles 53 (Municipalities Generally) and 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes to limit municipal regulation of firearms and ammunitions and provide for declaratory or injunctive relief, actual damages, and reasonable expenses to a person adversely affected by a municipal ordinance enacted in violation of the prohibition. SB 5 passed by Senate; HB 671 passed by House.

Continued on page 4 >>

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Adverse Possession

Weible v. Wells, 2017 WL 750795 (Pa. Super., February 27, 2017). Superior Court reversed trial court order granting plaintiff title to property, and remanded with direction to vest title in defendants by adverse possession. County ownership of property for three years prior to acquisition by plaintiffs did not require 21-year period for adverse possession to restart, but rather tolled the period during county ownership where property was used for actual county purposes.

Assessment

Fasnacht v. Bd. of Prop. Assessm't Appeals of Schuylkill County, 2017 WL 931653 (Pa. Cmwlth., March 9, 2017). Reassessment of property due to improvements was held not to be spot reassessment where appraiser monitored property during course of construction, and reassessed property after she deemed construction completed. The law does not specify a time limit for revising assessments due to construction, and because the trial court found the appraiser's testimony of close monitoring and the time frame

of construction credible, reassessment was not made at an "arbitrary time" after construction.

In re City of Coatesville, 2017 WL 631821 (Pa. Cmwlth., February 16, 2017) (UNREPORTED-See 210 Pa. Code §69.414). Trial court determination that property satisfied requirements of constitutional and statutory tests for tax exemption was inappropriate absent analysis of each factor in tests and separate factual findings. Commonwealth Court vacated the order and remanded, noting that charitable exemption cases are fact-intensive, and that prior cases have limited value as precedent.

Civil Rights

Commonwealth v. Cannarozzo, 2017 WL 787044 (Pa. Cmwlth., March 1, 2017). Borough's entry into rental property with authorization of tenant held not to constitute a violation of the Fourth Amendment rights of the owner. Commonwealth Court reiterated that in a rental situation, the Constitution operates "primarily to protect the privacy interest of the tenant rather than the landlord."

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Cimorelli v. Tioga County, 2017 WL 551910 (M.D. Pa., February 10, 2017). Motion to dismiss §1983 action against county denied where county department of human services' failure to interview other individuals who provided care to injured infant was alleged to have been in noncompliance with legal requirements in child abuse investigations and an "unofficial custom" of the county. Plaintiff child care provider was temporarily divested of property interest in license to operate until appeal bureau ordered expungement of the abuse report.

Igwe v. Skaggs, 2017 WL 395745 (M.D. Pa., January 30, 2017). Substantive due process §1983 claim permitted to proceed against township where township police officer voluntarily engaged in high speed chase without being dispatched and was involved in a collision killing the wife of plaintiff. Officer was entitled to qualified immunity because no clearly established constitutional right was violated by the conduct, but further discovery was necessary to determine if township policies were deliberately indifferent to constitutional rights so as to impose municipal liability.

O'Neal v. Bedford County, 2017 WL 244866 (W.D. Pa., January 19, 2017). Plaintiff brought §1983 claim against county and prothonotary/clerk of courts in her official capacity for erroneous court docket entry providing that plaintiff was a convicted felon, alleging a loss of employment and educational

opportunities. Defendants' motions to dismiss were granted. Prothonotary/clerk of courts was an officer of the court system, and thus a state officer not considered a "person" for purposes of §1983 claim. Although the county, as a local government unit, would be considered a "person" subject to suit, plaintiff alleged no policy or custom that would implicate municipal liability. The court permitted plaintiff to amend her complaint to bring an action against the official in her personal capacity.

"The outcome here is dictated by the terms of the Agreement as approved by the Township, i.e., the contractual obligation which it assumed. Our decision should not be read as a limitation of a public official's rights of free speech or his/her duty to keep the electorate informed. Rather, a Township is liable for its contractual obligations and, . . . vicariously liable for the breach of such obligations by its agents."

- *Pezzano v. Towamencin Twp.*

Eminent Domain

McMaster v. Twp. of Bensalem, 2017 WL 962454 (Pa. Cmwlth., March 13, 2017). Township redirection of storm water on to owner's property held not to amount to a de facto taking, and may only be redressed in a tort action rather than through damages under the Eminent Domain Code. The record did not disclose any substantial deprivation of use of property by the redirection. Furthermore, consequential damages under the Eminent Domain Code

were not recoverable because redirection did not amount to a grade change or interfere with access to the property.

Employee Relations

City of Allentown v. Int'l Ass'n of Fire Fighters Local, 2017 WL 1151104 (Pa. March 28, 2017). Commonwealth Court reversed. In the context of an interest arbitration award, the number of required firefighters per shift is a mandatory subject of bargaining and although it implicates the managerial role, does not unduly infringe on managerial rights.

Borough of Emmaus v. Pennsylvania Labor Relations Bd., 2017 WL 957758 (Pa. Cmwlth. March 13, 2017). Firefighters permitted to unionize under Act 111 of 1968 where borough paid firefighters an hourly wage, promulgated rules and regulations, subjected firefighters to direction and discipline by other borough employees, and owned all property of the department.

Enforcement / Citations

Berks-Lehigh Reg'l Police Officers Ass'n v. Upper Merion Twp., 2017 WL 113959 (Pa. Cmwlth., January 12, 2017)(UNREPORTED-See 210 Pa. Code §69.414). When regional police department disbanded with nearly one year remaining on collective bargaining contract, arbitration conducted to "determine the impact" of the decision to disband the department was not final and binding with regard to a breach of contract claim brought by the associa-

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tion in the court of common pleas. Furthermore, because a breach of contract claim was not necessarily an unfair labor practice, claim could be brought before the court rather than the Pennsylvania Labor Relations Board.

City of Warren v. Workers' Comp. Appeal Bd. (Thomas Haines), 2017 WL 931693 (Pa. Cmwlth., March 9, 2017). Decedent worked as a firefighter, and died of cancer approximately 341 weeks after retirement. At the time of decedent's death, a claim could be submitted for an occupational disease within 300 weeks of the last date of exposure to hazard. Because decedent's claim had expired, retroactive application of intervening amendment extending time period for filing a claim would revive an extinguished claim in violation of the "due course of law" clause of Article I, Section 11 of the Pennsylvania Constitution.

Pezzano v. Towamencin Twp., 155 A.3d 96 (Pa. Cmwlth., February 16, 2017). Commonwealth Court reversed trial court dismissal of breach of contract

claim against township. Violation of confidentiality clause in employee separation agreement by two members of a five-member board of supervisors rendered township liable for breach of contract, notwithstanding fact that the two supervisors voted against the agreement or that they were immune from tort claims individually for same conduct.

Fees and Charges

Costa v. City of Allentown, 153 A.3d 1159 (Pa. Cmwlth., January 12, 2017). Commonwealth Court affirmed trial court determination that plaintiff failed to carry burden of proving that rental unit licensing fee was grossly disproportionate to costs of administration and thus an impermissible tax. Challenger has initial burden of establishing costs associated with licensing program. Furthermore, trial court was determined to be correct in concluding that costs of program include indirect costs related to an increased burden on existing budgetary line items.

"We are by no means saying that the City's \$75 annual license fee is reasonable. Rather, we are saying that it was Appellants' burden to establish that the . . . fee was grossly disproportionate, which Appellants failed to do. Appellants presented a very narrow approach that did not take into consideration any of the Rental Program's indirect costs, and once the City identified an unquantified and significant indirect cost that was properly attributable to the Rental Program and the trial court accepted such indirect cost, it was not an error for the trial court to conclude that Appellants failed to meet their burden of proof."

- *Costa v. City of Allentown*

Land Use

Borough of W. Conshohocken v. Soppick, 2017 WL 1161053 (Pa. Cmwlth., March 29, 2017). Borough not authorized to initiate enforcement proceedings under zoning ordinance until such time that landowner has exhausted appellate rights. Landowner was not required to seek a stay of stop work order, and the Pennsylvania Municipalities Planning Code did not authorize enforcement action during pendency of appeal from underlying citation.

Shvekh v. Zoning Hearing Bd. of Stroud Twp., 154 A.3d 408 (Pa. Cmwlth., February 6, 2017). Commonwealth Court reversed trial court decision affirming zoning hearing board enforcement order. Plaintiff was cited for operating a "tourist home" in violation of township zoning ordinance when they advertised property for rent on website advertising vacation homes and occupied the property no more than one week a month. Despite deference granted to zoning board in interpreting ordinance, doubts in scope of definitions must be resolved in favor of the landowner and the least restrictive use of the land.

Municipal Boundaries

Adams Twp. v. Richland Twp., 154 A.3d 250 (Pa., February 22, 2017). Commonwealth Court determination that boundary commission appointed pursuant to Section 303 of the Second Class Township Code, must determine original location of township line, reversed. Doctrine of acquiescence may be used by commission where original

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line cannot be ascertained and substantial improvements have been made, without protest or intervention by townships, in reasonable reliance on assumed boundary. Furthermore, application of doctrine may result in use of current tax assessment line for township boundary.

Tax Sales

Lee v. Luzerne County Tax Claim Bureau, 2017 WL 1152555 (Pa. Cmwlth. March 28, 2017) (UNREPORTED-See 210 Pa. Code §69.414). Appellants purchased property in 2005 at a tax sale, and thereafter it was being used as a burial ground. After assuming that property was tax exempt, they stopped paying property taxes and a subsequent tax sale was ordered. Appellant petition to set aside 2005 tax sale was time barred by six-month statute of limitations. See 42 Pa. C.S. §5522(b). Furthermore, the court could not retroactively impose tax exemption absent an affirmative request of owner to exempt property.

Gillingham v. County of Delaware, 154 A.3d 875 (Pa. Cmwlth., February 14, 2017). Commonwealth Court applied *Blocker* personalty vs. real property distinction for purposes of affirming determination that county was immune from suit for injuries caused by trip over computer wires on floor in recorder of deeds office. Despite plaintiff's argument that the *Grieff* "care, custody, and control of real property" was the appropriate test, the court applied recent precedent to conclude that the presence of computer cables were not analogous to the maintenance of the floor on which they were located.

By holding that a board of [boundary] commissioners may consider the doctrine of acquiescence upon its determination that the original boundary cannot be located conclusively, we strike a balance between the board's statutory duty to determine, when possible, the true location of the boundary and the need to bring resolution and closure to disputes involving municipal boundaries. Although ascertainment of the true location of the boundary is the primary means by which such disputes may be resolved, a board of commissioners' search for evidence of that boundary need not extend in perpetuity.

- *Adams Twp. v. Richland Twp.*

Legislative Updates:

Continued from page 1

HB 99, PN 425. Amends Title 8 (Boroughs and Incorporated Towns) of the Pennsylvania Consolidated Statutes to permit borough council to enter into contracts or make purchases without advertising, bidding or price quotations in emergency circumstances. HB 99 passed by House and referred to Senate Local Government Committee.

HB 423, PN 439. Amends the Second Class Township Code to provide that upon the resignation of an elected township official, a vacancy is not created until the date that the resignation is accepted by a majority vote of the board of supervisors at a public meeting or the effective date of the tendered resignation, whichever is later. HB 423 passed by House and referred to the Senate Local Government Committee. See also HB 422 (First Class Township Code).

HB 1071, PN 1270. Amends Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes to prohibit a political subdivision from imposing a ban, fee, surcharge or tax on a recyclable plastic bag supplied by a retail establishment to a purchaser of consumer goods at the point of sale in the Commonwealth. HB 1071 passed by House.

HB 16, PN 1056. Amends the Local Tax Collection Law to prohibit the payment of taxes to an account that is in or includes only an individual's name. A tax collector would be required to open an account that includes the name of an office, title or position, and may include the name of the municipality for which the tax collector was elected or appointed. This account must also be used for any taxes collected by the tax collector under the Local Tax Enabling Act. HB 16 passed by House and given first consideration by Senate.

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