

THE Zoning Official



A NEWSLETTER FOR MEMBERS OF THE PA ASSOCIATION OF ZONING OFFICIALS

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PLAYING DETECTIVE Zoning Officers Use Creativity to Uncover Violations

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In many smaller communities, zoning officers also serve as code enforcement officers and building inspectors. They often have additional administrative duties, such as serving as liaisons to boards and commissions.

When it comes to land use regulations, however, zoning officers are fundamentally and solely responsible for ensuring compliance with the zoning ordinance and many related ordinances, such as for subdivisions and land development, stormwater, and conditions of prior approvals. Unlike construction or nuisance code violations, though, zoning violations are not always visible or easily determined. Thus, zoning officers sometimes need to be detectives when executing their jobs.

Like police officers, zoning officers enforce a written code of laws. Likewise, they are compelled to act on violations that

they may see in their travels or become aware of through complaints.

Complaint-driven enforcement issues often arrive by email or anonymous letters, citizen complaint forms, or word-of-mouth from an elected official who was “tipped off” by a constituent. As with law enforcement, the mere verbal or written suggestion or claim of a violation is not enough to take legal enforcement action.

Zoning officers must investigate and gather solid proof that will withstand a vigorous defense by an aggressive attorney. Whether the case comes before a zoning hearing board or a district justice, zoning officers must compile evidence and prepare compelling testimony to effectively present their case.

Caution required on searches

As you know, zoning is the regula-

tion of height, bulk, area, and use. When a new building is constructed, the zoning officer can easily check setbacks and other dimensions with a tape measure, or better yet, require a surveyed as-built foundation plan. Consequently, compliance with dimensional standards is usually easily confirmed and self-evident.

In cases of “use” violations, however, often the activities are transient, off-hours, and not always externally visible. In such instances, the zoning officer must act like a detective and compile evidence that a violation is occurring.

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Zoning violations are not always readily apparent so zoning officers must often act like detectives when investigating complaints.



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The U.S. Supreme Court, in a landmark 1967 decision in *Camara v. Municipal Court*, said that code enforcement searches are restricted by the U.S. Constitution's Fourth Amendment, which limits government's warrantless searches. This applies to all levels of government, the court said, including local zoning officers and police.

Zoning officers, like police, can seek administrative search warrants in Common Pleas Court if they feel they need more direct evidence of a violation and have probable cause. Fortunately, zoning violations are never as serious as actual crimes and don't rise to the same level of gravity, and thus, the police analogy only goes so far.

Finding 'hidden' violations

Certain types of zoning uses and activities are obvious to the passerby, such as those that require visibility to the public road and customers and require signage. These advertise themselves.

Other types of uses are low-key and almost invisible, however. In rural areas, the renting of barns and agricultural properties as wedding and celebration venues are infrequent enough that they are difficult to detect before the events occur. Use and renting of garages and other accessory buildings for commercial purposes is another common violation that can be hard to detect.

Zoning officers have also seen businesses used for catering or wine-tasting classes after hours, which certainly don't conform to typical office use. The conversion of accessory buildings to dwellings or subdivision of houses into illegal apartment units are also common occurrences that require vigilance to detect.

Unfortunately, zoning officers have lim-

ited tools to confirm the existence of these illegal uses. No one wants the "zoning police" peeking in windows — and the Fourth Amendment has issues with that as well.

The reality is that most local enforcement is driven by complaints. Zoning officers react to information coming in more than they proactively find violations. Local government is generally overworked and understaffed, making investigative resources limited.

Municipalities also seem to have hundreds, if not thousands, of self-appointed "citizen code officers" in every community who are more than happy to share their observations about violations or things that they think should not be allowed.

Zoning officers spend many hours either confirming that these complaints are violations or refuting them, and then breaking the news to the "tipster" that their complaint is unfounded. In this way, zoning and code enforcement are reactive.

Tools for compiling evidence

So how does a zoning officer compile evidence once they have credible information about a potential violation? First-hand, on-site investigation is still the best tool. Zoning officers sharing under oath what they saw or heard as trained professionals is strong evidence.

Technology can also help. Satellite photography available through websites like Google Earth, Bing Maps, Yahoo Maps, and others have transformed zoning en-



forcement. These global mapping products have become one of the most helpful tools in municipal government.

The historical map data of Google Earth and similar programs allows you to see snapshots in time of a property and potentially document illegal construction. As for potential Fourth Amendment issues, the courts have validated the use of satellite photographs in various legal matters.

Proceed cautiously, however. There have been several cases in which the use of such tools has backfired. For example, in Riverhead, N.Y., the code enforcement department used Google Earth to search townwide for illegal pools and created a political firestorm that caused the city to abandon the program.

Still, it is settled law that the sky above 500 feet is considered a sort of public highway for aircraft and so that height is generally the limit of property privacy rights. As far back as 1946, the Supreme Court in *United States v. Causby* wrote, "The landowner owns at least as much of the space above the ground as he can occupy or use in connection with the land."

Identifying short-term rentals

A growing trend in land use is transient rentals, which present new sets of challenges. Web-based rental platforms allow people to rent out their homes and extra rooms for stays of generally less than 30 days, and often just weekends.

These short-term rentals have created new issues with public safety and neighborhood stability, with weekend "party

Essentials of Township Planning

DESCRIPTION: This course will cover municipal planning responsibilities, including the Pennsylvania Municipalities Planning Code (MPC), subdivisions and land development, zoning, duties of the planning commission and zoning hearing board, and administration and enforcement of the Uniform Construction Code.

DATES AND LOCATIONS:

- September 13: Westmoreland County
- October 4: Berks County

CREDITS: This course is eligible for six PMGA planning/zoning points and/or six CZO credits.

REGISTRATION: To register, go to learn.psats.org/planner.

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