

Summer into Fall 2007

ConserveLand

A Publication by the Pennsylvania Land Trust Association



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Conserveland.org Library is Always Growing

In case you haven't visited the conserveland.org library in a while, you should! There are a number of great resources waiting for you. (look for "Library" in the left hand column menu).

We have expanded on the organizational development section to include samples of communication materials, bylaws and strategic/work plans. We have also added materials to most sections including the Case for Conservation, Trails and Greenways and Conservation and the Law.

We are always looking to improve the library. If you have a document that you would like to share, please do! E-mail any

potential library materials to nfaraguna@conserveland.org or upload it yourself at the website.

Also, if there is a specific category that you feel we haven't addressed or expanded on, let us know -- we are constantly growing and improving the library so we can provide you with the best and up to date resources. ☐

We are pleased to offer a new feature in *ConserveLand* --- **Case Law Reviews**, generously prepared by Frone Crawford, Esq. of Montgomery McCracken Walker & Rhoads LLP....[see page 7](#).

"Having clean waters teeming with aquatic life means substantially less if Pennsylvanians cannot access them for recreation. The Fishing Access Agreement provides a template that will allow private landowners to retain control of their property while ensuring fishing opportunities for the public."

Dr. Doug Austen
Executive Director
PA Fish & Boat Commission

Fishing Access Agreement



now available at conserveland.org

Post Questions, Share Expertise & Exchange Ideas!
Sign up for the **Conserveland Listserv** at conserveland.org!

Conservation Leaders Honored

The Pennsylvania Land Trust Association recognized individuals and governmental entities for advancing land conservation efforts in Pennsylvania. The awards were presented at the 5th Annual Land Conservation Conference in State College in the presence of land trust and conservation colleagues.

LIFETIME LEADERSHIP AWARD

"Larry Williamson embodies the true nature of government service to the communities and people of Pennsylvania,"

- DCNR Secretary Michael DiBerardinis



From Left to Right: Phil Wallis, Larry Williamson

Larry Williamson, DCNR Deputy Secretary for Conservation and Technical Services, has always been known as a person who gets close to his work, working tirelessly for long hours, and going above and beyond what is needed. This type of inspiring dedication and commitment to land conservation encapsulates precisely what this award represents.

Past Award Honorees

Phoebe Driscoll, 2006
Dennis Collins, 2005
Bill Sellers, 2004

LEGISLATIVE LEADERSHIP AWARDS



From Left to Right: Rep. Chris Ross, Phil Wallis

PA Representative Chris Ross (R-158) has illustrated his commitment to conservation and leadership in achieving passage of Act 154 of 2006, which facilitates land trust and local government partnerships.

"We thank Chris for his commitment to conserving the lands and waters of Pennsylvania. He has demonstrated leadership in protecting these resources."

- Phil Wallis

Past Award Honorees

Rep. Kate Harper
Rep. Ray Bunt (Ret.)

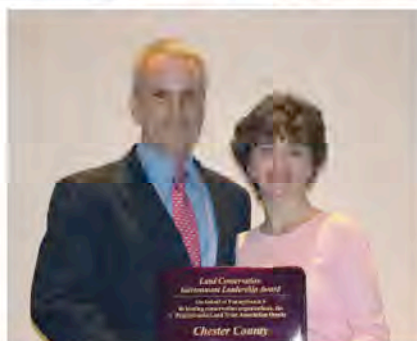
GOVERNMENT LEADERSHIP AWARDS

This is the first presentation of this award, which was developed to honor Pennsylvania municipalities and counties that have demonstrated leadership and success in the conservation of our special places and landscapes.

Chester County

"Chester County's groundbreaking, integrated approach to protecting the county's resources serves as a national model and has had a profound impact. Since the inception of the program, over 31,500 acres of land have been protected and over \$215 million in non-county monies have been leveraged."

- Molly Morrison, President, Natural Lands Trust



Pictured from Left to Right: William Gladden, Director, Chester County Department of Open Space and Molly Morrison, President, Natural Lands Trust and current PALTA Vice-President

Warwick Township (Lancaster County)

"Warwick Township serves as a model for other townships in Pennsylvania. The township has crafted and implemented the most effective TDR program in the state".

- Karen Martynik, Executive Director
Lancaster Farmland Trust



Pictured from Left to Right: Jeffrey Swinehart, Deputy Director, Lancaster Farmland Trust and Dan Zimmerman, Manager, Warwick Township

Leading by Giving your Power Away by Andy Robinson

In 1986, I killed a nonprofit organization.

I'm not proud of this story, but it must be told. I was the first hire and only staff, a former board member, and I was competent in many ways: delivering programs, expanding outreach, raising more money than we had ever raised. I did my job so well that my board colleagues – who had done everything themselves in the era before paid staff – gradually backed away.

Within a year or so, all that remained of the organization was me. When I left, it collapsed.

In retrospect, I failed the first test of leadership. Rather than empowering and training others to do work that needed to be done, I just did it myself. My behavior was expedient and responsible in meeting our day to day needs, but deadly over the long run.

No long range success without leadership development

How long will it take to “win” on your issue? If you're working to preserve land for wildlife or agriculture or recreation, how soon will all the key parcels be protected? If you're trying to improve public health by reducing the impacts of pollution, when do you expect the polluters to change their behavior? If you're promoting an end to environmental injustice and racism, when can you declare success?

In other words, do you really plan to be around for the victory celebration? For many of us, our work will take decades to bear fruit. Who will carry on in your place? If you're not recruiting and training and supporting your replacement today, will he or she be available tomorrow?

A recent study by the BridgeSpan group shows that U.S. nonprofits will need 640,000 new senior managers in the next decade. This “nonprofit leadership deficit” is bound to cripple many individual organizations – including yours.

At a recent conference, I posed a question to the audience: “How many of you have a succession plan for your organization?” One third raised their hands.

“How many of you,” I asked, “have a succession plan for yourself? In other words, you've thought about your life

Continued on Page 11

10 tips for empowering your colleagues

1. Hand off one task per day. At the beginning of each work day, designate one substantial task – not data entry or stuffing envelopes – that you can give to a colleague, then provide relevant training and support.
2. Don't be a perfectionist. Accept that people solve problems and complete tasks differently; they may not meet always meet your standards. Indeed, your “standards” may be irrelevant. Learn from the approaches that others take, rather than judging them for doing the work differently..
3. Encourage others to learn by trying out new skills and letting them fail. See the previous item. Support risk-taking by rewarding risk.
4. Let other people run meetings. If you're the one who sets the agenda and facilitates the meetings, you're holding a lot of power. Rotate that job among your coworkers. Use each meeting as an opportunity to build somebody's skills.
5. Listen twice as much as you speak. You have two ears and one mouth; there's a reason for that. The strongest leaders are always good listeners.
6. Learn about the cultural dimensions of leadership. What constitutes “leadership behavior” varies by culture and region. Study and respect those differences.
7. Designate a “fool” in the Shakespearean sense: someone who will tell you when you're abusing your power or making a martyr of yourself. Find someone you trust who will speak unvarnished truth – even when it's uncomfortable – and won't be punished for his or her perspective.
8. Consider term limits for staff. I believe that term limits, which mandate a certain amount of turnover and new blood, are helpful for nonprofit boards. Given the entrenched leadership at a number of nonprofits – executive directors who have been on the job a decade or more – I'm beginning to think that term limits may be a good idea for staff leaders as well.
9. Think about leadership development the way you would think about retirement planning. Set specific benchmarks and deadlines. Which skills and responsibilities will you hand off? By when? How will measure your success in empowering others?
10. Create a “will” for what you want to leave behind when you step down. What's your vision for the organization, post-you? Write it down, then ask your colleagues to help revise it so that everyone has a stake in making it happen.



Federal Condemnation **versus Pennsylvania Conservation & Communities**

**An Interview with Andy Loza, Executive Director
Pennsylvania Land Trust Association**

Why is eminent domain a concern for land trusts?

Communities and caring landowners look to land trusts as the most reliable path to achieving permanent land protection. As land trusts achieve greater excellence in their practices and build their stewardship funds, they are increasingly able to deliver on a promise of permanent protection. The achilles heel of land trusts is eminent domain. Land trusts have no defense against it. They can argue about how much money they are owed when their land is condemned or easement extinguished, but their conservation work provides no substantial basis to legally challenge a taking.

*“The achilles heel
of land trusts is eminent
domain. Land trusts
have no defense against it.”*

federal authority can pre-empt local control. It does not signify the actual location for a line. In the corridor, any number of power lines can be located using federal condemnation authority. Although five lines might be proposed today, there is no limit to the number that could be located in the future.

What is new about the federal condemnation threat?

Electric companies have always had to work through the Pennsylvania Public Utility Commission (PUC) to secure the ability to condemn land for a new or expanded powerline. Section 1221 of the national Energy Policy Act (EPA) of 2005 gave the federal Department of Energy unprecedented power to strip the Pennsylvania General Assembly and the PUC of any meaningful control over the abuse of eminent domain as related to electrical transmission. It fast-tracks use of eminent domain without regard to local concerns.

Is the Department of Energy exercising this new power?

Yes. In spring 2007 the DOE announced its plan to establish the euphemistically named Mid-Atlantic National Interest Electric Transmission Corridor, a federal condemnation zone covering more than 200 mid-Atlantic state counties including 52 of Pennsylvania's 67 counties. [See map on p. 3 to view impacted counties.]

A corridor that covers 52 Pennsylvania counties? What kind of power line is this?

Designation of a “corridor” creates a broad area where

Aren't eminent domain and new 165-foot 765-volt power lines needed to ensure reliable electricity?

No. The drive for new transmission lines is about profits, not reliability. Pennsylvania is a net exporter of electricity.



From its base, the Statue of Liberty stands 151 feet tall, while transmission towers can reach heights of 165 feet.

PJM Interconnection, LLC, which manages the region's transmission system, has stated quite publicly that they are looking to ‘develop an efficient transmission “super-highway” to bring low cost coal resources to market.’ You have old (and dirty) coal fired power plants in the Ohio Valley that can produce electricity cheaply; you have relatively expensive electricity in markets east of Pennsylvania. If major new power lines are built across Pennsylvania, the coal-fired power plants can make fortunes selling cheap electricity in the expensive markets.



There is nothing wrong with making money. However, it is wrong to use federal eminent domain to give one set of energy suppliers a business advantage at the expense of landowners, landscapes, and communities.

Proponents of federal condemnation say it is vital for national security. What is your response?

Stringing hundreds of miles of highly visible lines from easily attacked towers and then making the population dependent on their integrity is the antithesis of good security planning. If we want to minimize our vulnerability to terrorism, we should look at decentralizing our electricity generation – generating power close to where it is needed, not generating it in the Ohio Valley and transporting it hundreds of miles to the east coast.

Are you opposed to all new power lines?

No. Transmission lines are a necessary part of our energy system. I object to condemning a person's land without having first looked for reasonable alternatives. I object to forcing gigantic towers and high voltage lines across carefully conserved lands without first considering whether

there might be more cost-effective, less damaging options.

Who opposes new federal eminent domain powers for transmission lines?

In addition to over eighty conservation and non-profit organizations, six governors, including Governor Rendell, the Pennsylvania General Assembly, and various members of the Pennsylvania Congressional delegation have expressed concern and/or taken action in regards to these powers. Information on these positions can be found at conserveland.org.

Is Congress considering any action to reign in federal eminent domain powers?

Currently, there are three bills pending in Congress (bills 829, 810, 809) that would repeal various aspects of the National Energy Policy Act. House Bill 829 ("NIETC Clarification Act") would incorporate consideration of natural impacts and value of special places into the siting process; House Bill 810 ("Protecting Communities from Power Line Act") repeals authority to acquire right of way through eminent domain; and House Bill 809 repeals specific language pertaining to corridor designation, the permitting process for construction of the transmission lines, eminent domain powers, and would require Congress' consent for proposed transmission lines sited across state boundaries. Also, legal challenges to the flawed corridor designation process are also being contemplated by various organizations.

Are there realistic alternatives?

The 2006 National Action Plan for Energy Efficiency notes that demand-side programs are capable of delivering energy resources at a scale comparable to that provided by constructing new power plants and at a cost far below that of any generation option available today. The most recent planning efforts for states such as Texas and Florida suggest that these efficiency options can be deployed rapidly enough and at a scale sufficient to more than offset all incremental load growth over the next fifteen year planning horizon.

Energy efficiency measures and new local energy generation, alone or together, can likely meet our region's growing demands for the foreseeable future. Certainly, these alternatives should be thoroughly explored before taking property and permanently scarring Pennsylvania's landscapes. ☒

For more information, visit <http://conserveland.org/pp/Transmission>.

2007 PA Land Conservation Conference in Review

The Pennsylvania Land Conservation Conference was held May 10-12, 2007 at the Penn Stater Conference Center Hotel in State College. The conference attracted 315 land conservation stakeholders and received an overall evaluation rating of 4.63 (out of 5.0) from those in attendance.

The conference also featured a comprehensive selection of critical conservation and related topics for conservation and farmland preservation professionals, board members, landowners, planners, and municipal officials from across the state.

From the Evaluations

"I found the conference very worthwhile, many great presenters and a wonderful networking opportunity. I learned a lot and plan to attend next year."



"An outstanding conference. Congratulations!"



"This event always motivates me and provides insight & new ideas"

conference can be downloaded at conserveland.org.

Next year's conference, which is scheduled for April 4-5 in Chester County, will be here before we know it. We will begin accepting proposals for seminars, workshops and roundtables in mid-August, so this is a good time for you to begin thinking about what topics you might want to present.

Proposals can be submitted online at conserveland.org. If you would like to discuss a specific topic or have a question regarding the submission process, please contact Nicole Faraguna at 717.909.1298 or nfaraguna@conserveland.org. ☐

In all, seven full-day seminars, one half day seminar and twenty-nine 60 to 90-minute concurrent sessions were available, totaling 136.5 hours of instruction. Handouts and powerpoint presentation materials from the

Special Thanks

2007 PA Land Conservation Conference Sponsors

PA Department of Conservation & Natural Resources, Bureau of Recreation & Conservation

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Appalachian Land & Conservation Services Co., LLC

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Centre County Community Foundation

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Institute for Conservation Leadership

Land Trust Alliance

Natural Lands Trust

The Nature Conservancy

Pennsylvania Game Commission

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Western Pennsylvania Conservancy

Western Pennsylvania Watershed Program

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Align your organization with Standards & Practices and prepare for Accreditation

Land Trust Standards & Practices Pilot Course

Managing Conservation Easements in Perpetuity

September 6-7, 2007 Valley Forge

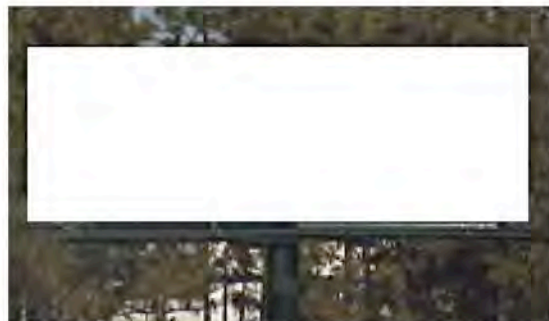
Visit conserveland.org to learn more and to download registration materials

Billboards

The regulatory process 42 years after the Federal Highway Beautification Act



Commonwealth Court has recently handed down three decisions relating to municipal zoning ordinance regulation of billboards. In all three cases, the validity of municipal regulations was challenged and, again in all three cases, the validity of the specific regulation at issue was sustained. The issuance of the decisions in these three cases coincides with the recent passing of Lady Bird Johnson who, in her role as “First Lady,” fought for and won the passage of the Highway Beautification Act in 1965. We will here provide summaries of the three Commonwealth Court decisions, and then comment on the state of billboard regulation in Pennsylvania, as affected by these three cases and by the Highway Beautification Act.



Township of Exeter v. ZHB of Exeter Township, 911 A.2d 201 (Pa Cmwlt. 2006)

Facts

Land Displays, Inc., a billboard company, filed applications in Exeter Township (Berks County) for 11 separate off-site advertising signs at various locations in the township. The proposed sizes of the billboards were either 300 square feet or 672 square feet, with a maximum height of 44 feet.

The Exeter Township Zoning Ordinance, although allowing off-site advertising signs, placed a limit of 25 square feet on the area of any off-site sign, and also set a maximum height of 25 feet. The permit applications were, obviously, rejected, whereupon Land Displays filed a challenge with the township Zoning Hearing Board to the substantive validity of the sign ordinance provisions, arguing that the size and height limitations of the ordinance created a de facto total exclusion of billboards in Exeter Township.

Land Displays, in presenting its case to the Zoning Hearing Board, relied heavily upon evidence and ultimately argument that the billboard industry had adopted standardized specifications of 300 square feet and 672 square feet for billboard sizes, such that “national advertisers” would contract for advertising only upon these standard sized billboards.

The township, in turn, presented its defense of the validity of its restrictions on sign area and sign height, citing concerns for public safety along highly congested highways, and also demonstrating that there were already in existence several off-site

advertising signs along the major highway within the municipality, conforming to the 25 square foot size and 25 foot height limitations.

Nevertheless, the Zoning Hearing Board found Land Displays’ arguments to be persuasive, and concluded that the severe limitations on size and height constituted a de facto exclusion of billboards (i.e., off-site signage) within Exeter Township. The Zoning Hearing Board did limit billboard signage to 300 square feet (excluding the rather huge 672 square foot option) and also created some limitations on placement that coincided with the busiest section of highway.

The Berks County Court, upon the Township of Exeter’s appeal thereto, affirmed the decision of the Zoning Hearing Board. The Township thereupon took its further appeal to Commonwealth Court.

Decision

Commonwealth Court first acknowledged that the theory of a de facto total exclusion was one that was recognized by the Pennsylvania courts—often, our courts have discussed total exclusions as if they were synonymous with de jure exclusions and, as witnessed by this case, it is a perfectly valid approach to exclusionary zoning to argue that the regulatory provisions are so severe as to create a de facto total exclusion, where, as here, the ordinance on its face makes provision for off-site sign:

“A de facto exclusion exists where an ordinance permits a use on its face, but when applied acts to prohibit the use throughout the municipality.” 911 A.2d at 204.

Secondly, the court acknowledged that off-site signage—i.e., billboards—were legitimate uses that could not be totally excluded from a municipality, citing *Borough of Dickson City v. Patrick Outdoor Media, Inc.*, 496 A.2d 427 (Pa.Cmwlth. 1985).

Having so set the table, Commonwealth Court then pulled the tablecloth out from under the signage company, concluding that Exeter Township's size and height limitations on off-site signs were reasonable and, in fact, did not serve to totally exclude off-site signage from the township. Citing *Atlantic Refining and Marketing Corporation v. Board of Commissioners of York Township*, 608 A.2d 592 (1992), the Court framed the scope of regulatory authority available to municipalities, in the context of billboard regulation, as follows:

"The zoning authority can establish rigorous objective standards in its ordinance for size, placement, materials or coloration of signs to insure that there offensiveness is minimized as much as possible. ... Signage ordinances utilizing these objective standards will be upheld where they are reasonably related to the clearly permissible objectives of maintaining the aesthetics of an area and fostering public safety through preventing the distraction of passing motorists."

Thus, Commonwealth Court allowed the township's arguments—protection of public safety and promotion of aesthetics—to trump Land Display's argument that the billboard industry could not survive in Exeter Township unless "national standards" for size and height were allowed:

"While the testimony ... reflects the importance of uniform sizing in the billboard industry, it simply is not sufficient to support a conclusion that the sign ordinance is unconstitutional. For all intents and purposes, the ZHB has allowed industry standards to control local conditions. This is neither a suitable nor satisfactory result." 911 A.2d at 204.

A key component of this decision was the township's ability to demonstrate that other advertisers—perhaps not "national advertisers"—had complied with the 25 square foot size limitation in erecting off-site billboard signs within the township. Note that Land Displays, Inc. has filed a petition for allowance of appeal to the Pennsylvania Supreme Court, and that on June 21, 2007, the Pennsylvania Supreme Court has accepted this appeal and, hence, the "fat lady" has not finished her song as yet. Stay tuned.

Lamar Advertising of Penn, LLC v. ZHB of The Borough of Deer Lake, 915 A.2d 705 (Pa.Cmwlth. 2007)

Facts

Traveling north from Berks County, the Borough of Deer Lake is located in Schuylkill County, Pennsylvania, a more rural area of the commonwealth. The Deer Lake Borough Zoning Ordinance (unlike Exeter Township's) failed to make any allowance for off-site advertising signage and, hence, the sign company here involved (Lamar Advertising) filed a challenge to the substantive validity of the Borough's zoning ordinance on the basis of de jure exclusion. The Zoning Hearing Board, in its decision on the valid-

ity challenge, acknowledged that the Borough's zoning ordinance constituted a total de jure exclusion of off-site signage, but, in fashioning a remedy for the unconstitutionality of the ordinance, imposed the sign area and height limitations applicable under the ordinance to permitted "on-site" signage, being 160 square foot maximum size and 25 foot maximum height.

Lamar, in its validity challenge, requested approval—either in the form of interpretation or in the form of a variance—to erect a 247 square foot sign 30 feet in height. Lamar, disappointed by the limitations imposed by the Zoning Hearing Board, filed its appeal to the Schuylkill County Court, arguing that, in addition to the de jure total exclusion of billboards, the size and height limitations imposed by the Zoning Hearing Board resulted in a second layer of exclusion, being a de facto exclusion of billboards, echoing the argument that Land Displays had posed in Exeter Township.

The Schuylkill County Court rejected the de facto exclusion component of this argument, sustaining the Zoning Hearing Board's size and height limitations. Thereupon, Lamar filed its appeal to Commonwealth Court.

Decision

Commonwealth Court sustained the Zoning Hearing Board's application of the size and height limitations of the Township Zoning Ordinance, concluding:

"The fact that the Board found the ordinance exclusionary as to off-site billboards does not automatically permit Lamar to erect whatever kind of structure it wishes without investigation into the reasonableness of the proposed plans. ... The approval of a challenger's plan is not automatic, but must be subject to reasonable regulation by the municipality, which must not be arbitrary or discriminatory and must bear a reasonable relationship to public health, safety, welfare and morals." 915 A.2d at 710.

Commonwealth Court went on to hold that, even though the size and height limitations were originally intended as limitations on on-site signage, they were reasonable regulations to be applied for the now-permissible off-site sign proposed by Lamar, noting that these restrictions were in the ordinance when Lamar filed its validity challenge:

"The board counters that it may apply existing dimensional restrictions to an applicant who has successfully proven a de jure exclusion because an unconstitutional de jure exclusion does not automatically defeat other restrictions in the ordinance." 915 A.2d at 711.

As was the case in Exeter Township, Deer Lake Borough already had advertising signs that complied with the area and height restrictions in the ordinance, thus proving that the size and height limitations did not constitute a de facto exclusion of signage within the borough.

As this case was decided after the Exeter Township case, and the size limitation of 160 square feet was more than six times as large as the 25 square foot size limitation sustained in Exeter, this result in Lamar is hardly surprising.

Adams Outdoor Advertising, LP v. Zoning Hearing Board of Smithfield Township, 909 A.2d 469 (Pa.Cmwlt. 2006)

Facts

Unlike Exeter and Lamar, this case does not involve alleged exclusion of billboards, but rather examines the circumstances under which a municipality may require removal of existing billboards.

Adams Outdoor Advertising (“Adams”) leased space on a 7.7 acre tract (otherwise undeveloped) for two billboard signs. The landowner decided that a more profitable use of the property could be made, and filed an application for land development approval to construct an office building on the tract, located in Smithfield Township, Monroe County.

Upon receipt of preliminary land development plan approval, the landowner was required by the township to remove the two billboard signs prior to commencement of any grading activities on the site. Adams resisted the requirement (the landlord does not appear to have been active in resistance), arguing that the township could not constitutionally require removal of the billboards until the landowner received a certificate of occupancy for the proposed office building.

The landowner did testify at the hearing that he was only performing excavation work, and that he did not have short-term plans for constructing the office complex.

Nevertheless, the Zoning Hearing Board sustained the township’s position that, since the landlord had “proposed” land development (as evidenced by the preliminary land development plan approval and application for a grading permit), the intent of the ordinance was to require the billboards to be removed at that stage of activity.

The exact language of the ordinance provisions at issue was as follows:

“Where an existing commercial advertising sign exists on a property proposing land development or alterations or enlargement of an existing use, said sign shall be removed.”

Aside from its argument that this provision was vague enough in using the term “proposing,” Adams’ argument was based upon its position that implementation of this ordinance provision would constitute an unlawful attempt to amortize a pre-existing off-site sign, constituting unlawful amortization and unlawful taking of its property.

Decision

Commonwealth Court first acknowledged that under the Pennsylvania Supreme Court’s decision in *PA Northwestern Distributors, Inc. v. ZHB of Moon Township*, 584 A.2d 1372 (Pa. 1991), any ordinance requirement that existing lawful, non-conforming billboards be “amortized”—removed after a certain number of years of use—constituted an unlawful taking of property without just compensation, in violation of the Pennsylvania Constitution.

The Court further noted that even the use of the term “amortization” was somewhat misleading, since the end result was a requirement for removal after a certain period of years, irrespective of the condition of the sign at the end of the “amortization period.”

Commonwealth Court nevertheless sustained the township’s position in requiring the two billboard signs to be removed concurrently with the commencement of grading activities on the site. Commonwealth Court sustained the township’s argument that the facts as here presented were readily distinguishable from a standard “amortization” requirement in a zoning ordinance, in that the required discontinuance of the billboard use was triggered by the choice of the landowner, not by any municipal action:

“It is the landowner’s voluntary decision to pursue land development on the subject property that necessitates removal of the billboards, rather than any action by the township.” 909 A.2d at 476.

Adams also argued that the regulation at issue violated its rights to equal protection, in that it did not apply to “on-site” signage, but rather applied only to off-site or billboard type signs. Commonwealth Court again rejected this argument, stating that “there is nothing novel or constitutionally infirm about the use of the on-site/off-site distinction.” 909 A.2d at 479.

Comment

Among these three cases, the Exeter case would seem to be by far the most significant in terms of future application. If the Pennsylvania Supreme Court does sustain the decision of Commonwealth Court, then municipalities in Pennsylvania will be able to apply the type of area and height restrictions which Exeter Township imposed on off-site signage—25 square feet maximum per side for all billboards and a maximum height of 25 feet. Thus, as so regulated, billboards would be either 5x5 feet in size, or perhaps 6 feet by 4 feet to conform with the more rectangular orientation of most billboards. Exeter therefore does not change the legal principle, that all municipalities in Pennsylvania must make provision for off-site signage in their zoning ordinances, but would allow what billboard companies would consider to be very strict limitations on the size of billboards.

Note further that the Adams case does not modify the principle of law established by the Pennsylvania Supreme Court in the *PA Northwestern* case, that existing lawful, non-conforming billboard signs (i.e., “grandfathered” signs) cannot be required to be removed, and are thus permitted indefinite extensions of time.

This brings us to a connection between the Pennsylvania case law as here discussed and the federal Highway Beautification Act of 1965, as amended in 1978 to provide that whatever the state law may be with regard to amortization—and many states differ from the Pennsylvania approach and authorize state, county or municipal regulations to require amortization (removal of billboard signs) after a reasonable period of time—any required removal of existing lawful, non-conforming billboards under the Highway Beautification Act would require compensation to the landowner.

Thus, the 1978 amendment to the Highway Beautification Act essentially adopts the Pennsylvania approach to amortization, rightly or wrongly.

As noted at the outset, Lady Bird Johnson's death, some 42 years after the passage of the Highway Beautification Act, lends some poignancy to a review of what that Act has and has not accomplished with regard to billboard regulation.

From the standpoint of those who wish to promote scenic highways, the Highway Beautification Act can be viewed as the proverbial road paved with good intentions and little in the way of results. Indeed, if one looks for a case study in the failure of federalism, one might well choose the Highway Beautification Act as an excellent example.

First, as is often the case in proposed federal legislation dealing with interstate commerce, a balance between federal regulation and state's rights must be negotiated. The concept of "state's rights" was considerably at issue in the mid-60's, at a time when the Lyndon Johnson administration was in a position to pass sweeping federal legislation on protection of civil rights and other matters (perhaps more important than highway beautification). In any event, the Highway Beautification Act sought to balance the issue by recognizing that land use or zoning regulation at the state, county or municipal level, which called for industrial or commercial uses within a particular stretch of federal highway, would be exempt from the billboard limitations as set forth in the Highway Beautification Act. Thus, local zoning for commercial or industrial uses would trump any restrictions on billboard construction under the federal act.

Okay, so then let's talk about "unzoned areas," where federal highways traverse. (Indeed, even today there are many areas of rural states that are unzoned and, hence, this additional issue was of substantial importance to the billboard industry.) The "compromise" reached was that any unzoned area in which commercial or industrial activities would take place would likewise, for a substantial area around such activities, be treated as zoned for commercial and industrial uses, thus trumping the regulatory provisions of the federal act. (For those interested in actually reading the regulations, note that they are codified at Title 23, Code of Federal Regulations, Part 750.)

These two loopholes assure that the billboard industry is nowhere near "shut out" from placing billboards adjacent to interstate highways—one need only witness the number of signs along I-95 for "South of the Border" as a case study in the massive scope of these two loopholes. The Federal Highway Administration does not concede that it is utterly lacking in its ability to challenge what it considers to be "sham" local zoning, such as a strip of commercial or industrial zones paralleling an interstate highway itself. The FHA's position is as follows:

"With respect to unzoned areas, we will recognize local practices on customary use as mutually agreed to by state and federal agencies. It will be our policy to assume the good faith of the several states in this regard. The only exception to the above would be a situation in which state or local authority might attempt to circumvent the law by zoning an area as 'commercial' for billboard purposes only. We think you will agree that this is a reasonable position, since

we know that the Congress does not wish for the law to be deliberately evaded." (See Legal Opinion on FHA's interpretation of 23 C.F.R., §750.708(b).)

Add to these two loopholes the restrictions as set forth in the 1978 amendment that non-conforming billboards cannot be required to be removed by any state (of course, in Pennsylvania, it wouldn't happen anyway) without payment of just compensation. The stated intent of the 1978 amendment was coupled with a commitment by the federal government to provide 75% of the funding necessary to pay for required removal of non-conforming billboards adjacent to interstate highways. Okay—sounds good—so how much money has been appropriated? The answer is, currently none. There are no appropriations available for federal assistance to states or municipalities who may wish to pay billboard owners to require them to remove existing non-conforming billboards.

Conclusion

While the Highway Beautification Act's provisions for planting of wildflowers along interstate highways may still enhance the aesthetics of our interstate highway system, it is clear that the billboard regulation and removal provisions of the Highway Beautification Act of 1965 have fallen way, way short of the purposes and intentions of those who passed the Act. It seems quite unlikely in today's world that an effective revisiting of these purposes will ever be achieved by the federal government.



ABOUT THE AUTHOR

Fronefield Crawford, Jr. is an attorney with Montgomery, McCracken, Walker & Rhoads, LLP / 1235 Westlakes Drive, Suite 200 / Philadelphia, PA 19312 and can be reached at fcrawford@mmwr.com.

*Every Land Trust
Practitioner Should Read:*

**"Easement Audits in
Colorado: What Can We
Learn From Them?"**

by Bill Silberstein

Exchange, Summer 2007

Download this article at the
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after this job and you have a plan to get there.” Considerably fewer hands went up.

“OK,” I said, “How many of you work so hard that you sometimes feel like a martyr?” Hands – lots and lots of hands.

Why are we failing at this? How come we work so hard, yet at the same time we are doing so little to develop new leadership within our organizations? When I posed this question to the participants, their answers fell into the following categories:

- **Personal.** We don’t always trust others to do the work as well as we can do it ourselves. At a certain level, it’s a problem of ego.
- **Organizational.** Because we’re busy putting out fires and dealing with our daily work load, we don’t perceive that we have time or resources to develop new leaders.
- **Societal.** In the U.S., we glorify the individual; phrases like “self-sufficiency” and “personal initiative” are sacred. We live in a culture that views asking for help as a sign of weakness, rather than an essential leadership quality. Succession planning is a way of acknowledging your own limitations and asking for help, and that makes a lot of folks uncomfortable.

In the short run, it’s often easier to just “do it yourself,” but that doesn’t build the capacity of your organization to survive and thrive over the long haul. If you don’t share your power – stated more clearly, if you don’t help others to find their own power – you lose. ☐

ABOUT THE AUTHOR

Andy Robinson is a member of the ICL consultant network based in Plainfield, Vermont. His recent books include *Big Gifts for Small Groups* and *Great Boards for Small Groups*. You can reach him at www.andyrobinsononline.com. Versions of this article first appeared in *Contributions* and *The Network*, the newsletter of the Institute for Conservation Leadership.

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Accreditation Update

Many land trusts are eager to achieve accreditation. The Land Trust Accreditation Commission is conducting a lottery to select applicants for the first year of the accreditation program.

8/31/2007 Deadline for Accreditation Lottery
for more information, visit www.landtrustaccreditation.org

Congratulations to

2007 Pilot Program Participants

*Bedminster Land Conservancy ❖ Brandywine Conservancy
Heritage Conservancy ❖ North Branch Land Trust
Wildlands Conservancy ❖ Willistown Conservation Trust*

Keep in Mind...

Through its Technical Assistance Program, the Pennsylvania Land Trust Association can assist land trusts in prioritizing your organizational needs and taking the steps to implement some or all of the Land Trust Standards & Practices or assist in seeking to prepare for accreditation. Contact the Association at 717.230.8560 to learn more about how we can help!

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105 Locust Street, Suite 300
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