Regulation vs. Title Issues

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Where Regulation & Title are Confused…

- Wetlands Delineation
- Floodplain LImits
- Riparian Law
- Zoning
- Local Ordinances
- Tax Maps
- Railroad Valuation Maps
- Subdivision Regulations
- Marketable Title

Takings Clause

SCOTUS: Takings Clause – Constitution (1)

Penn Central Trans. v. New York City
438 U.S. 104; 98 S. Ct. 2646; 57 L. Ed. 2d 631; 1978

- While this Court has recognized that the "Fifth Amendment's guarantee . . . [is]
- …**designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole,"**
- …this Court, quite simply, has been **unable to develop any "set formula"** for determining when "justice and fairness" require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons.

SCOTUS: When is it a Taking? (2)

Penn Central Trans. v. New York City
438 U.S. 104; 98 S. Ct. 2646; 57 L. Ed. 2d 631; 1978

- A "taking" may more readily be found when the interference with property can be characterized as a physical invasion by government, … than when interference arises from some **public program adjusting the benefits and burdens of economic life** to promote the common good.
- "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law,"

SCOTUS: When is it a Taking? (3)

Penn Central Trans. v. New York City
438 U.S. 104; 98 S. Ct. 2646; 57 L. Ed. 2d 631; 1978

- It is, of course, implicit in *Goldblatt* that a use restriction on real property may constitute a "taking" if not reasonably necessary to the effectuation of a substantial public purpose…
- (if height restriction makes property wholly useless "the rights of property . . . prevail over the other public interest" and compensation is required).

SCOTUS: Playing 'chicken' with Airplanes? (4)

Penn Central Trans. v. New York City

438 U.S. 104; 98 S. Ct. 2646; 57 L. Ed. 2d 631; 1978

- Finally, government actions that may be characterized as acquisitions of resources to permit or facilitate uniquely public functions have often been held to constitute "takings."
- In holding that direct overflights above the claimant's land, that destroyed the present use of the land as a chicken farm, constituted a "taking," *Causby* emphasized that Government had not "merely destroyed property [but was] using a part of it for the flight of its planes."

SCOTUS: Historic Designations (5)

Penn Central Trans. v. New York City

438 U.S. 104; 98 S. Ct. 2646; 57 L. Ed. 2d 631; 1978

- Because this Court has recognized, in a number of settings, that States and cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city,
- ...appellants **do not contest that New York City's objective of preserving structures and areas with special historic, architectural, or cultural significance is an entirely permissible governmental goal.**

SCOTUS: Historic Designations (6)

Penn Central Trans. v. New York City

438 U.S. 104; 98 S. Ct. 2646; 57 L. Ed. 2d 631; 1978

- "Taking" jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated.
- In deciding whether a particular governmental action has effected a taking, this **Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole** -- here, the city tax block designated as the "landmark site."

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Pennsylvania Disputes at the U.S. Supreme Court

SCOTUS: Regulation Can Be a Taking (1)

Pennsylvania Coal v. Mahon: 260 U.S. 393 (1922)

- The **deed conveys the surface, but in express terms reserves the right to remove all the coal under the same, and the grantee takes the premises with the risk,** and waives all claim for damages that may arise from mining out the coal.
- But the plaintiffs say that whatever may have been the Coal Company's rights, they were taken away by an Act of Pennsylvania, approved May 27, 1921, P.L. 1198, commonly known there as the Kohler Act.

SCOTUS: Regulation Can Be a Taking (2)
Pennsylvania Coal v. Mahon: 260 U.S. 393 (1922)

- The statute forbids the mining of anthracite coal in such way as to cause the subsidence of, among other things,
- As applied to this case the statute is admitted to destroy previously existing rights of property and contract.
- The question is whether the police power can be stretched so far.

SCOTUS: Regulation Can Be a Taking (3)
Pennsylvania Coal v. Mahon: 260 U.S. 393 (1922)

- Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.
- As long recognized, some values are enjoyed under an implied limitation and must yield to the police power.
- But obviously the implied limitation must have its limits, or the contract and due process clauses are gone.

SCOTUS: Regulation Can Be a Taking (4)
Pennsylvania Coal v. Mahon: 260 U.S. 393 (1922)

- The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.
- It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go --

Penn.: Condemnation of Easement (1)
Redevelopment Authority v. Seeherman
55 Pa. Commw. 297 (1980)

- …City of Wilkes-Barre between South Franklin Street and Sambourne Street.
- Prior to August 14, 1974, this tract was bisected by a private easement which connected South Franklin and Sambourne Streets and which was owned in trust by the appellees.
- On August 14, 1974, without notice to the appellees, the Authority filed a declaration of taking with respect to the entire tract, pursuant to the Eminent Domain Code, Act of June 22, 1964,

Penn.: Condemnation of Easement (2)
Redevelopment Authority v. Seeherman
55 Pa. Commw. 297 (1980)

- On September 20, 1976, the Authority conveyed to a private developer (D & D Motors) the portion of the tract fronting on Sambourne Street, having a depth of 89 feet, *"subject to existing reservations, easements, restrictions, conditions, etc."*
- On October 19, 1976, after extensive negotiations over a period of at least two months, the Authority filed a second declaration of taking to condemn the easement interests of the appellees in the tract sold to D & D Motors.

Penn.: Condemnation of Easement (3)
Redevelopment Authority v. Seeherman
55 Pa. Commw. 297 (1980)

- The parties to this appeal would have us decide whether the 1974 condemnation of the servient estate without notice to the easement holder resulted in the extinguishment of the easement.
- We agree with the court below that the controlling issue in this case is whether the Authority could properly issue a declaration of taking to condemn the easement rights of the appellees in 1976 after the servient estate had been sold by the Authority to a private developer. We hold that it could not, regardless of whether or not the easement was extinguished in 1974.

Penn.: Condemnation of Easement (4)

Redevelopment Authority v. Seeherman
55 Pa. Commw. 297 (1980)

- If *Curtis* is still applicable and the easement was extinguished in 1974, then there was nothing left to condemn in 1976. But if Curtis is not applicable, then the 1976 declaration of taking was invalid because there was no valid public purpose to be served by condemnation of the easement. In either case, the preliminary objections to the 1976 declaration were properly sustained.
- The only conceivable purpose of the 1976 declaration of taking would be to serve the private interests of D & D Motors.

Case Study: How to Be Painfully Obvious When Violating the U.S. Constitution

NJ: Taking by Zoning (1)

Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- This is a "taking" case. A large wooded portion of the Sheerr property was first zoned by Evesham Township for public park and recreation purposes and, by later amendment, for conditional uses considered appropriate for environmental reasons.
- No permitted use was established, except in the sense that conditional uses are permitted uses.
- Other ordinances provided further restrictions.

NJ: Taking by Zoning (2)

Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- Regulation may constitute a taking:
- The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. *[Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)]*

NJ: Taking by Zoning (3)

Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- In January 1979 Evesham adopted Ordinance 1-1-79, amending its zoning legislation to conform to the new Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.
- This ordinance placed the wooded portion of plaintiff's property (formerly zoned GB-5) in a "PPR" district, which permitted only public park and recreational uses.
- The remaining portion of the property (formerly zoned GB) was zoned "CH-5," a highway commercial district, in which subdivi*18sions of not less than five acres were permitted.

NJ: Taking by Zoning (4)

Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- On April 17, 1979 the township adopted Ordinances 9-4-79 and 11—4-79 changing plaintiff's PPR designation to "EP-1: Environmental Protection."
- No permitted use was allocated to the EP-1 zone.

NJ: Taking by Zoning (5)
Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- On February 5, 1980 the township adopted Ordinance 43-10-79, restricting the cutting of trees and shrubs on lands reserved for public use.
- This ordinance affected plaintiff's property while it was zoned PPR, and so long as the official maps carried it in a "Park or Preservation" classification.
- In December 1980 Ordinance 43-10-79 was amended by Ordinance 56-12-80, designed to protect trees and shrubs growing in a natural state anywhere within the township

NJ: Taking by Zoning (6)
Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- Evesham's legislative history underlines an intent to preserve the plaintiff's property for the benefit of the public while avoiding payment of compensation.
- When the new ordinance was discussed on January 16, 1979 the solicitor warned members of the township council that the PPR designation probably amounted to unconstitutional taking.

NJ: The Group of One (7)
Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- Plaintiff's property is the only property in the entire township now zoned EP-1.
- No other property owner in Evesham has been required to obtain a conditional use permit from the planning board before using his property for any purpose.
- The design criteria in the ordinance, which constitute the "specifications and standards" required by § 67 of the Municipal Land Use Law, necessarily apply only to the Sheerr tract.
- Their references to trees, aquifer, green acres and highway frontage are tailored to fit that tract.

NJ: The PPR Zoning Regulation (8)
Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- This regulation was clearly a denial of due process and equal protection. The Sheerr tract was the only private land in the township so zoned.
- The ordinance denied any private use of the property. Its purpose was to create a public benefit—the establishment of a public park and recreation area for the community.
- All economic return from the property was prevented.
- No factual basis for the zoning classification existed.

NJ: The EP-1 Zoning Regulation (9)
Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- Evesham's EP-1 zoning designation rests upon a theory of environmental protection.
- These bases for the adoption of the severe restrictions affecting the plaintiff's premises were demolished by plaintiff's expert witnesses and the admissions of the township officials.
- Plaintiff's EP-1 lands were provided with no permitted uses. Only conditional uses, of a limited nature, were allowed.

NJ: But Wait, There's More! (10)
Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- In the context of this case, the significance of the bonus arrangement lies in its revelation of intent.
- Once again the governing body of the Township has said that it wants this property preserved for the benefit of the public. **The bonus offers no genuine attraction to the plaintiff or to a developer.**
- It is a transparent effort to confer some supposed benefit upon the property which will blunt an anticipated "taking" claim.
- **The benefit is illusory and the effort unsuccessful.**

NJ: Park Designation on Master Plan (11)

Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- The "preservation" designation of plaintiff's property was removed from the official map in June 1980 but the master plan continues its classification as "park or preservation area."
- **Aside from these concerns, the map designations underline once again the intent of the township to preserve the plaintiff's property in its natural state.**

NJ: Not What They Said, What They Did…(12)

Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- Evesham's officials testified that they had no intention of taking plaintiff's property by regulation and did not expect to acquire it by condemnation.
- They did not think they could afford its purchase. Their words bear little resemblance to their actions.
- "[T]he Constitution measures a taking of property not by what a State says, or by what it intends, but by what it does." ***Hughes v. Washington, 389 U.S. 290***

NJ: Park Designation on Master Plan (13)

Sheerr v. Township of Evesham,
184 N.J. Super. 11 (1982)

- The proper test in a "taking" case is that set forth in ***Pennsylvania Coal Co. v. Mahon***, supra :
- Does the regulation go too far; is it excessive?
- Has there been a taking?
- It is clear that there has been with respect to the PPR designation.

Takings Clause vs. The "Support Estate" Pennsylvania

SCOTUS: Support Estate (1)

Keystone Bituminous v. DeBenedictis:
480 U.S. 470 (1987)

- The complaint alleges that Pennsylvania recognizes three separate estates in land: The mineral estate; the surface estate; and the **"support estate."**
- Beginning well over 100 years ago, landowners began severing title to underground coal and the right of surface support while retaining or conveying away ownership of the surface estate.
- It is stipulated that approximately 90% of the coal that is or will be mined by petitioners in western Pennsylvania was severed from the surface in the period between 1890 and 1920.

SCOTUS: Support Estate (2)

Keystone Bituminous v. DeBenedictis:
480 U.S. 470 (1987)

- In the portions of the complaint that are relevant to us, petitioners alleged that both §4 of the Subsidence Act, as implemented by the 50% rule, and §6 of the Subsidence Act, constitute a taking of their private property without compensation in violation of the Fifth and Fourteenth Amendments.

SCOTUS: Support Estate (3)

Keystone Bituminous v. DeBenedictis:
480 U.S. 470 (1987)

- In rejecting petitioners' Takings Clause claim, the District Court first distinguished Pennsylvania Coal, primarily on the ground that the Subsidence Act served valid public purposes that the Court had found lacking in the earlier case.
- The Court of Appeals affirmed, …*Pennsylvania Coal* does not control because the Subsidence Act is a legitimate means of "protecting] the environment of the Commonwealth, its economic future, and its well-being."

SCOTUS: Support Estate (4)

Keystone Bituminous v. DeBenedictis:
480 U.S. 470 (1987)

- In rejecting the argument that the support estate had been entirely destroyed, the Court of Appeals did not rely on the fact that the support estate itself constitutes a bundle of many rights, …
- …but rather considered the **support estate as just one segment of a larger bundle of rights** …
- …that invariably includes either the surface estate or the mineral estate.

SCOTUS: Support Estate (5)

Keystone Bituminous v. DeBenedictis:
480 U.S. 470 (1987)

- "To focus upon the support estate separately when assessing the diminution of the value of plaintiffs' property caused by the Subsidence Act therefore would serve little purpose.
- **The support estate is more properly viewed as only one 'strand' in the plaintiff's 'bundle' of property rights, which also includes the mineral estate.**

SCOTUS: Support Estate (6)

Keystone Bituminous v. DeBenedictis:
480 U.S. 470 (1987)

- …The use to which the mine operators wish to put the support estate is forbidden.
- However, because the plaintiffs still possess valuable mineral rights that enable them profitably to mine coal, subject only to the Subsidence Act's requirement that they prevent subsidence, their entire 'bundle' of property rights has not been destroyed."

SCOTUS: Kohler vs. Subsidence Act (7)

Keystone Bituminous v. DeBenedictis:
480 U.S. 470 (1987)

- Thus, the Subsidence Act differs from the Kohler Act in critical and dispositive respects.
- With regard to the Kohler Act, the Court believed that the Commonwealth had acted only to ensure against damage to some private landowners' homes.
- Here, by contrast, the Commonwealth is act-ing to protect the public interest in health, the environment, and the fiscal integrity of the area. That private individuals erred in taking a risk cannot estop the Commonwealth from exercising its police power to abate activity akin to a public nuisance.

Penn.: Zoning vs. Title—Coal (1)

McClimans v. Board of Supervisors, 107 Pa. Commw. 542, 529 A.2d 562 (1987)

- The landowners involved have leased to Amerikohl the right to remove, by a strip mining process, coal on their property. The property in question is zoned R-l residential. Under the terms of the zoning ordinance, surface mining is not a permitted use in the R-l zone.

Penn.: Zoning vs. Title—Coal (2)

McClimans v. Board of Supervisors, 107 Pa. Commw. 542, 529 A.2d 562 (1987)

- Appellants make two related arguments. They claim:
- (a) that the Townships Zoning Ordinance is based on "improper, irrational and discriminatory planning" not based on a comprehensive plan and bearing no rational relationship to the health, safety, morals or general welfare of the public and
- (b) that the Boards failure to grant Appellants relief constitutes an unreasonable restriction and unconstitutional taking without compensation in violation of the Pennsylvania and United States Constitutions.

Penn.: Zoning vs. Title—Coal (3)

McClimans v. Board of Supervisors, 107 Pa. Commw. 542, 529 A.2d 562 (1987)

- Further, a zoning ordinance is a valid exercise of the police power when it promotes public health, safety or welfare and its regulations are substantially related to the purpose the ordinance purports to serve.
- The use of the police power, however, is not unfettered.
- "[t]he police power, however broadly construed, may not be employed to take private property for public use without just compensation."

Penn.: Zoning vs. Title—Coal (4)

McClimans v. Board of Supervisors, 107 Pa. Commw. 542, 529 A.2d 562 (1987)

- Our analysis, then, must be two-pronged. As the United States Supreme Court recently said: *"[w]e have held that land use regulation can effect a taking if it 'does not substantially advance legitimate state interests, ... or denies an owner economically viable use of his land.'"*
- ***Keystone Bituminous Coal Ass'n v. DeBenedictis, 107 S.Ct. 1232, 1242 (1987)***

Penn.: Zoning and the Public Interest (5)

McClimans v. Board of Supervisors, 107 Pa. Commw. 542, 529 A.2d 562 (1987)

- As to the first prong of the analysis, whether the zoning ordinance advances a legitimate state interest by being substantially related to the health, safety, morals or general welfare of the public, …
- …we feel that ample evidence was presented to support the Board's findings that to permit strip mining in the residential zone would be detrimental to the public's health, safety and general welfare.

Penn.: Zoning and the Public Interest (6)

McClimans v. Board of Supervisors, 107 Pa. Commw. 542, 529 A.2d 562 (1987)

- If the effect of the zoning law or regulation is to deprive a property owner of the lawful use of his property, it amounts to a "taking," for which he must be justly compensated…
- in Pennsylvania, the zoning of mining operations assumes added significance because Commonwealth law recognizes coal, surface, and the right to support as three separate estates in land, each capable of being vested in different persons at the same time.

Penn.: Zoning and the Public Interest (7)

McClimans v. Board of Supervisors, 107 Pa. Commw. 542, 529 A.2d 562 (1987)

- …an ordinances exclusion of mining on the surface can amount to a taking of the coal estate below if that ordinance 'conclusively prevents' an owner from gaining access to his subsurface property.
- In order to be a "taking" of the coal estate, the coals exclusion must be conclusively prevented by the zoning ordinance.

Penn.: Zoning and the Public Interest (8)

McClimans v. Board of Supervisors, 107 Pa. Commw. 542, 529 A.2d 562 (1987)

- Pennsylvania Supreme Court even went so far as to say that if underground mining can be accomplished at all, even if the surface opening for the mine is only available in another municipality, the fact that mining operations are not permitted and/or feasible in the municipality whose ordinance is being attacked does not constitute a "taking."

Penn.: Concurring Opinion (9)

McClimans v. Board of Supervisors, 107 Pa. Commw. 542, 529 A.2d 562 (1987)

- As the majority opinion objectively notes, the townships performance with respect to its zoning regulations has involved some significant missteps:
- The assistance which the judicial system has consistently extended to local municipalities in these matters, out of concern for the welfare of the public, should challenge municipal officials to be better prepared in pursuing the heavy and intricate responsibilities which rest upon them.

Wetlands Location

Mass.: Wetlands Defined by Statute (1)

Nelson v. Conservation Commission of Wayland, 90 Mass. App. Ct. 133 (2016)

- The plaintiff appeals from a judgment of the Superior Court affirming a determination by the conservation commission of Wayland (commission) that there are wetlands on his property.
- That determination was made under Wayland's wetlands and water resources protection by-law.

Mass.: Wetlands Defined by Statute (2)

Nelson v. Conservation Commission of Wayland, 90 Mass. App. Ct. 133 (2016)

- These findings, in full, provide that '"[p]lants including [r]ed [mjaple, American [e]lm, skunk cabbage, and other hydrophilic vegetation comprise at least 50% of the vegetational community."
- Further, '"[r]unoff water from surface drainage frequently collects above the soil surface."

Minn.: Wetlands Defined by Statute (1)

Minnesota Center for Environmental Advocacy v. Big Stone County Board of Commissioners, 638 N.W.2d 198 (2002)

- The EAW incorrectly identifies wetland 6-11W as a Type-3 wetland consisting of 20 acres. Type-3 wetlands are defined as "inland shallow fresh marshes in which soil is usually waterlogged early during a growing season and often covered with as much as six inches or more of water."

NY: Wetlands Defined by Statute (1)
Drexler v. Town of New Castle, 62 N.Y.2d 413 (1984)

- The central issue on this appeal is whether a town may regulate the use of wetlands which are not designated on the State Freshwater Wetlands map, without filing or promulgating a map identifying such local wetlands.
- The Freshwater Wetlands Act, enacted in 1975, establishes a comprehensive scheme for the regulation of freshwater wetlands designed to strike a balance between preservation and protection on the one hand, and reasonable economic use and development on the other.

NY: Wetlands Defined by Statute (2)
Drexler v. Town of New Castle, 62 N.Y.2d 413 (1984)

- The statute defines "freshwater wetlands" as only those lands and waters "shown on the freshwater wetlands map" (ECL 24-0107, subd 1), and it defines the "freshwater wetlands map" as that "promulgated by the [Department [of Environmental Conservation] pursuant to section 24-0301"
- …those wetlands which either have "an area of at least twelve and four-tenths acres or more" or, if smaller, have, in the discretion of the Commissioner, "unusual local importance"

NY: Wetlands Defined by Statute (3)
Drexler v. Town of New Castle, 62 N.Y.2d 413 (1984)

- With regard to other wetlands, however, which do not qualify as a "freshwater wetland" under the statute, because they are neither large enough nor deemed to be unusually important and which, therefore, have not been identified by the Commissioner on the "freshwater wetlands map", the statute reserves entire and exclusive jurisdiction in the local governments.

NJ- Wetlands Defined by Statute (1)
New Jersey Dept. of Envir. Prot. v. Huber, 213 N.J. 338 (2013)

- Freshwater wetlands, defined as areas "inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support …a prevalence of vegetation typically adapted for life in saturated soil conditions," N.J.S.A. 13:9B-3, are divided into three categories:

SCOTUS: Definitions can Change…(1)
United States v. Riverside Bayview Homes, Inc. 474 U.S. 121, (1985)

- A "freshwater wetland" was defined as an area that is "periodically inundated" and is "normally characterized by the prevalence of vegetation that requires saturated soil conditions for growth and reproduction." 33 CFR § 209.120 (d)(2)W (1976).
- "The term 'wetlands' means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for fife in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas." 33 CFR §323.2(c) (1978).

Penn.: Defining Wetlands (1)
United States v. Pozsgai, 999 F.2d 719 (1993)

- In April 1987, the U.S. Army Corps of Engineers received information that fill material was being dumped into wetlands on a 14-acre site in Morrisville, Pennsylvania.
- The Corps investigated the site, determined that nearly the entire property constituted wetlands, and found that concrete rubble, earth, and building scraps had been dumped onto one-half to three-quarters of an acre of the wetlands portion of the property.

Penn.: Criteria for Definitions (2)
United States v. Pozsgai, 999 F.2d 719 (1993)

- Corps biologist and field investigator Martin Miller described the site as "a forested wetland dominated by arrowwood" and noted "areas of standing water were scattered throughout the site," and "a stream flows along the east border of the property and wetland and. is a tributary to the Pennsylvania Canal."
- Miller also observed several species of vegetation on the site which require a saturated environment to survive, including skunk cabbage, sensitive fern, red maple, sweet gum, ash, and aspen.

Penn.: Letter from Engineering Firm (3)
United States v. Pozsgai, 999 F.2d 719 (1993)

- Based upon this investigation, it is my professional opinion that the **entire site meets the criteria set forth by the Army Corps of Engineers as "wetlands."** This is based upon soils, hydrology and vegetation.
- Please be advised that any further development that might be considered on this site would have to be approved and reviewed by the Army Corps of Engineers, and it has been our experience in the past that the Corps is most reluctant to issue permits for sites that have conditions such as this.

Penn.: 2 Tries for a Different Outcome (4)
United States v. Pozsgai, 999 F.2d 719 (1993)

- Apparently dissatisfied with J.G. Park's opinion, Pozsgai hired a second engineer, Ezra Golub, to evaluate the property. Golub, too, advised Pozsgai the property was wetlands and the Corps would have to approve any building.
- Seeking yet a third opinion, Pozsgai hired Majors Engineers, who concurred in the views expressed by the previous two engineers.

Penn.: 2 Tries for a Different Outcome (4)
United States v. Pozsgai, 999 F.2d 719 (1993)

- It simultaneously moved for a temporary restraining order and a preliminary injunction to stop further discharge.
- The district court entered the TRO.
- Two days later, on August 26, the video camera recorded 25 truckloads of dirt dumped on the site, and a man, identified by witnesses as John Pozsgai, operating a bulldozer leveling the fill.

Penn: Wetlands & Private Roads Act (1)
Holtzman v. Etzweiler, 760 A.2d 1195 (2000)

- On April 8, 1996, Appellants filed a petition for a private road…
- The Board determined that Appellants' property was landlocked and held that the most feasible route was the one leading to the northern boundary of the property from Hemlock Road. …
- *The northern route from Hemlock Road represents the shortest access. It in and of itself is a relatively modest grade as opposed to some severe dips in the Petitioners' initial proposal. It traverses uninhabited woodland and traverses an existing pathway.*

Penn: Wetlands & Private Roads Act (2)
Holtzman v. Etzweiler, 760 A.2d 1195 (2000)

- Pursuant to Section 11 of the Private Road Act (Act), Act of June 13, 1836, P.L. 551, as amended, 36 P.S. § 2731…
- The Board must consider four factors when determining the site for a private road: the shortest distance, best ground, least injury to private parties, and desire of the petitioners.

Penn: Two Surveyors Testified (3)
Holtzman v. Etzweiler, 760 A.2d 1195 (2000)

- At the hearing, Appellant-husband testified that his proposed route would cross the land of four different property owners…
- Moreover, Keith Heigel, Appellants' surveyor, testified that Appellants' proposed route would interfere with farmland and affect wetlands…
- Further, William A. Burch, Appellees' surveyor, testified that the Board's proposed route is passable with a vehicle and is a short distance in length.

NJ- Wetlands Not Property Boundaries (1)
N.J.A.C. 7:7A-3.4

- The outside boundary of a transition area is **determined solely by reference to the freshwater wetlands boundary and is not affected by property lines.**
- Therefore, a property within 150 feet of a freshwater wetlands may contain a transition area that arises from a freshwater wetlands on another property.
- Every property containing a transition area is subject to this chapter, even if the freshwater wetland that causes the transition area is located on another property.

NJ- Ground Conditions Can Change (2)
In re: Freshwater LOI, 2008 N.J. Super. Unpub.

- On December 8, 2005, DEP issued a notice of deficiency and asked Landmark to address two specific changes that had occurred on the site between 2000 and 2005.
- The first was that the wetland in the southeast corner of the site could no longer be considered "isolated" because a site inspection revealed that a steady flow of water drained from the area into a roadside inlet.
- Second, the inspection also revealed that selected areas within the watercourse had acquired wetland characteristics.

NJ- A Survey that Expires? (3)
In re: Freshwater LOI, 2008 N.J. Super. Unpub.

- The Letter of Interpretation and terms of this letter shall expire on September 1, 2010. As noted, the applicant is entitled to rely on the original wetland survey as conditioned by item 1 above. However, please noted [sic] that the issuance of this letter does not guarantee that any future permits or waivers, that may be required will be approved.

Riparian Titles & Incidental Rights

SCOTUS: Retroactive Legislation (1)
Brewer-Elliott Oil & Gas Co. v. USA:
260 U.S. 77 (1922) (headnotes)

- A grant of land in the bed of a non-navigable river made by the United States while holding complete sovereignty over the locality including it, cannot be divested by a retroactive rule or declaration of the State subsequently created out of that territory, classifying the river as navigable.

Right to Accretions Washington Dispute

WASH: Accreted Shoreline Lands (10)
Hughes v. State: 67 Wn.2d 799 (1966)

- it necessarily follows that no individual can have any *legal right* whatever to claim any easement in, or to impose any servitude upon, the tide waters within the limits of the state, without the consent of the legislature. (Italics ours.)
- The court concluded:
- We think the authorities abundantly show that a riparian proprietor on the shore of the sea, or its arms, has no rights as against the state or its grantees to extend wharves in front of his land below high water mark.

SCOTUS: Overturns Hughes v. State (1)
Hughes v. Washington
389 U.S. 290 (1967)

- **The question for decision is whether federal or state law controls the ownership of land, called accretion, gradually deposited by the ocean on adjoining upland property conveyed by the United States prior to statehood.**
- The circumstances that give rise to the question are these.
- Prior to 1889 all land in what is now the State of Washington was owned by the United States, except land that had been conveyed to private parties.

SCOTUS: Overturns Hughes v. State (2)
Hughes v. Washington
389 U.S. 290 (1967)

- At that time owners of property bordering the ocean, such as the predecessor in title of Mrs. Stella Hughes, the petitioner here, had under the common law a right to include within their lands any accretion gradually built up by the ocean.
- Washington became a State in 1889, and Article 17 of the State's new constitution, as interpreted by its Supreme Court, denied the owners of ocean-front property in the State any further rights in accretion that might in the future be formed between their property and the ocean.

SCOTUS: Quoting "Borax v. Los Angeles" (3)
Hughes v. Washington
389 U.S. 290 (1967)

- While the issue appears never to have been squarely presented to this Court before, we think the path to decision is indicated by our holding in ***Borax, Ltd. v. Los Angeles, 296 U. S. 10 (1935).***
- In that case we dealt with the rights of a California property owner who held under a federal patent, and in that instance, unlike the present case, the patent was issued after statehood.

SCOTUS: "Quoting Borax v. Los Angeles" (4)
Hughes v. Washington
389 U.S. 290 (1967)

- "[t]he question as to the extent of this federal grant, that is, as to the limit of the land conveyed, or the boundary between the upland and the tideland, is necessarily a federal question.
- It is a question which concerns the validity and effect of an act done by the United States; it involves the ascertainment of the essential basis of a right asserted under federal law."

SCOTUS: Federal vs. State Law…(5)

Hughes v. Washington
389 U.S. 290 (1967)

- This brings us to the question of what the federal rule is.
- The State has not attempted to argue that federal law gives it title to these accretions, and it seems clear to us that it could not.
- A long and unbroken line of decisions of this Court establishes that the grantee of land bounded by a body of navigable water acquires a right to any natural and gradual accretion formed along the shore.

SCOTUS: Federal vs. State Law…(6)

Hughes v. Washington
389 U.S. 290 (1967)

- In ***Jones v. Johnston, 18 How. 150 (1856),*** a dispute between two parties owning land along Lake Michigan over the ownership of soil that had gradually been deposited along the shore, this Court held that …
- **…"[l]and gained from the sea either by alluvion or dereliction, if the same be by little and little, by small and imperceptible degrees, belongs to the owner of the land adjoining."**
- The Court has repeatedly reaffirmed this rule…

SCOTUS: Justice Stewart Concurs (7)

Hughes v. Washington
389 U.S. 290 (1967)

- As is so often the case when a State exercises its power to make law, or to regulate, or to pursue a public project, **pre-existing property interests were impaired here without any calculated decision to deprive anyone of what he once owned.**
- But the Constitution measures a taking of property not by what a State says, or by what it intends, but by what it does.

SCOTUS: Unconstitutional Taking (8)

Hughes v. Washington
389 U.S. 290 (1967)

- **Although the State in this case made no attempt to take the accreted lands by eminent domain, it achieved the same result by effecting a retroactive transformation of private into public property—without paying for the privilege of doing so.**
- Because the Due Process Clause of the Fourteenth Amendment forbids such confiscation by a State, no less through its courts than through its legislature, and no less when a taking is unintended than when it is deliberate, I join in reversing the judgment.

Additional Rulings: Riparian Boundaries

Federal or State Law??: NC (4)

State v. ALCOA: 853 F.3d 140; 2017

- Thus, when the PPL Montana Court stated that "questions of navigability for determining state riverbed title are governed by federal law," …
- …it was only **reaffirming the federal nature of the issue of navigability for title, a nature evident since the founding and recognized in cases over the course of more than 150 years.**
- The position advocated by North Carolina and the dissenting opinion would result in a bizarre state of affairs with two different classes of States under the Constitution.

Character of the Riverbed: NC (5)

State v. ALCOA: 853 F.3d 140; 2017

- …it nonetheless revealed both a lack of commercial navigation at statehood and repeated efforts after statehood in attempting to make the relevant segment navigable.
- **When used for title purposes, navigability is determined at the time of statehood based on the natural and ordinary condition of the body of water.**
- Thus, courts seeking to determine navigability for title must determine whether, at statehood, the relevant segment of the river could have been used as a highway for commerce, by the "customary modes of trade and travel" available at that time.

Effect of Legislation: New York (17)

Fulton Light Heat & Power v. New York: 200 N.Y. 400; 94 N.E. 199; 1911

- In ***Chenango Bridge Co. v. Paige, (83 N. Y. 178)***, which involved the riparian rights of owners upon the Chenango river, a freshwater stream, it was held that, …
- …though **navigable as a highway, it was a private river;** that **they owned the bed and banks, subject to the public easement of navigation**, and …
- …that the **legislature, except under the power of eminent domain, upon making compensation**, could not interfere further than for the purpose of regulating, preserving and protecting the public easement.

Penn: Retroactive Laws (1)

Krenzelak v. Krenzelak, 503 Pa. 373 (1983)

- [w]here the language of the statute is general, and might be given both retroactive and prospective operation, it will under this principle be held to be prospective only:
- This rule is especially applicable where a retroactive construction will either destroy or impair vested rights, and includes a prohibition against laws which, while operating upon events taking place in the future, divest rights, particularly property rights, which were vested anterior to the time of the enactment of such law:

Penn: Retroactive Laws (1)

Sher v. Berks County Board of Assessment Appeals 940 A.2d 629 (2008)

- A statute shall be construed prospectively unless the legislature clearly intended otherwise.
- A retroactive law is "one which relates back to and gives a previous transaction a legal effect different from that which it had under the law in effect when it transpired."

Penn: Retroactive Laws (2)

Sher v. Berks County Board of Assessment Appeals 940 A.2d 629 (2008)

- However, "[w]here no vested right or contractual obligation is involved, an act or a regulation is not impermissibly construed retroactively when applied to a condition existing on its effective date, even though the condition results from events which occurred prior to that date."
- **A right is not vested unless it is fixed and without condition.**

TENN: Unconstitutional Taking … (8)

Miller v. State

124 Tenn. 293; 137 S.W. 760; 1910

- The **lands upon which the dam of the plaintiff in error is located were granted previous to the enactment of these statutes**, and …
- …if Wolf river be not a navigable stream in a legal or technical sense the owner--the riparian proprietor--has title to the banks and the bed of the stream and the right to use his property for the purposes for which it is suitable.
- The statutes declaring the stream navigable and a public highway would, if valid, deprive him of this use without compensation. **There could not be a clearer case of violation of the constitutional provisions stated.**

TENN: Widespread Interpretation (9)

Miller v. State

124 Tenn. 293; 137 S.W. 760; 1910

- It has been repeatedly so adjudged by the courts of other States having similar constitutional provisions.
- Murray v. Preston, 106 Ky. 561, 50 S.W. 1095,
- People v. Elk River Mill Co., 107 Cal. 221, 40 P. 531,
- Bayzer v. McMillan Mill Co., 105 Ala. 395, 16 So. 923,
- Walker v. Board of Public Works, 16 Ohio 540;
- State v. Pool, 74 N.C. 402;
- **Morgan v. King, 35 N.Y. 454, 91**
- **Partridge v. Eaton, 63 N.Y. 482;**
- **Barclay R. & Coal Co. v. Ingham, 36 Pa. 194;**
- Allen v. Weber, 80 Wis. 531, 50 N.W. 514,

Notice Statutes and Titles

Penn: Notice Statutes & Tax Sale (1)

Teslovich v. Johnson, 486 Pa. 622 (1979)

- "The strict provisions of the Real Estate Tax Sale Law were never meant to punish taxpayers who omitted through oversight or error (from which the best of us are never exempt) to pay their taxes.
- Tax acts were rather meant to protect the local government against wilful, persistent long standing delinquents for whom we hold no brief, and to whom the appellate court decisions have consistently given short shrift."

Penn: Notice Statutes & Tax Sale (2)

Teslovich v. Johnson, 486 Pa. 622 (1979)

- Mrs. Shroyer is not, nor is she alleged to be, a "wilful, persistent, long standing delinquent".
- She went to the Fayette County Tax Claim Bureau of her own initiative, notified them of her whereabouts, and began making payments on the tax delinquency that had accumulated since the separation from her husband; …
- …she continued to mail payments to that Bureau until the Bureau erred and sent her a refund which indicated that she no longer had a tax delinquency; …

Penn: Notice Statutes & Tax Sale (3)

Teslovich v. Johnson, 486 Pa. 622 (1979)

- …and she asserted her property rights at the first available opportunity after learning of the actions taken by the Bureau and the reasons therefor.
- To interpret section 602 of the Real Estate Tax Sale Law to permit a single notice to tenants by the entireties is to countenance the taking of a citizen's property under circumstances such as those presented here.
- Such a taking is completely unrelated to the protection of local government and amounts to no more than a trap for unwary taxpayers.

Penn: Notice Statutes & Tax Sale (4)

Teslovich v. Johnson, 486 Pa. 622 (1979)

- As a consequence, we find that section 602 of the Real Estate Tax Sale Law requires separate and individual notice to each named owner of property; regardless of whether that owner holds in common, in joint, or by the entireties.
- "The notice provisions of the tax sale statute must be strictly complied with in order to guard against the deprivation of property without due process of law. [citations omitted]."

Penn: Retroactive Application? (5)
Teslovich v. Johnson, 486 Pa. 622 (1979)

- We recognize that this construction of section 602 may cast clouds upon titles which were obtained at tax sales conducted in accordance with the Auritt v. Wheatcroft line of cases, and which were heretofore believed to be clear titles.
- In order to obviate this problem, today's construction will be given prospective effect only. All future notices must, therefore conform to this opinion.

Penn: Retroactive Application? (6)
Teslovich v. Johnson, 486 Pa. 622 (1979) (dissent)

- I am reasonably confident, however, from the record before us that I can legitimately rely upon the doctrine of judicial notice to accurately conclude that Herbert is an 'each' and Esther is also an 'each'.
- I cannot however agree that today's decision should apply only to future notices. In order to insure that individuals similarly situated to the appellants herein will be treated equally, this decision should apply to all cases which are pending

NJ- Race-Notice Statutes (1)
Palamarg Realty Co. v. Rehac, 80 N.J. 446 (1979)

- Defendants Rehac and Piatkowski claim title to their tract by **deed from Kupire Corporation dated November 21, 1973** and recorded November 26 of that year.
- The claim of title to the other tract, asserted by Worth and Sharp, rests upon **a deed from the same grantor, Kupire Corporation, dated September 13, 1971** and recorded the following day.
- Although the two sets of defendants **received deeds to their respective tracts from a common grantor on different dates,** their **back titles, to the extent here relevant, are otherwise identical.**

NJ- Race-Notice Statutes (2)
Palamarg Realty Co. v. Rehac, 80 N.J. 446 (1979)

- The law is well settled, however, that a quitclaim deed passes the same estate to a grantee as does a deed of bargain and sale.
- absent any unusual equity, a court should decide a question of title such as this in the way that will best support and maintain the integrity of the recording system. The underlying purpose of the Recording Act is clear.

NJ- Intent of the Recording Act (3)
Palamarg Realty Co. v. Rehac, 80 N.J. 446 (1979)

- An historical study of the [Recording] Act, as well as an analysis of the cases interpreting it, leads to the conclusion that it was **designed to compel the recording of instruments affecting title, …**
- …for the ultimate purpose of permitting purchasers to rely upon the record title and to purchase and hold title to lands within this state with confidence.
- The means by which the compulsion to record is accomplished is by favoring a recording purchaser, both by empowering him to divest a former non-recording title owner and by preventing a subsequent purchaser from divesting him of title.

NJ- Intent of the Recording Act (4)
Palamarg Realty Co. v. Rehac, 80 N.J. 446 (1979)

- This ability to deprive a prior and bona fide purchaser for value of his property shows a genuine favoritism toward a recording purchaser.
- It is a clear mandate that the recording purchaser be given every consideration permitted by the law, including all favorable presumptions of law and fact.
- It is likewise a clear expression that a purchaser be able to rely upon the record title.

Zoning & Recording vs. Title – Common Scheme

Setbacks: Zoning vs. Title

Zoning:	Deed/Common Scheme:
Regulation/Ordinance	Incorporeal Right
Public Safety/Benefit	Landowner Benefit
Flexible, Uncertain	More Stable
Vote, Variance	Legitimate Transfer
Commissioners, Board, Government Agency	Owners of Dominant and Servient Rights.
Zoning	Deed/Common Scheme

Penn: Zoning as a Taking (1)

Centre Lime & Stone Co. v. Spring Twp. Bd. of Sup.
787 A.2d 1105 (2001)

- If the effect of a zoning law is to deprive property owners of the lawful use of their property, it amounts to a "taking" for which the owners must be justly compensated. Stabler Development Company. However, because all zoning involves a "taking" in the sense that landowners are not completely free to use their property as they choose, such a "taking" does not entitle the landowners to relief unless the owners' rights have been unreasonably restricted.

Penn: Zoning as a Taking (2)

Centre Lime & Stone Co. v. Spring Twp. Bd. of Sup.
787 A.2d 1105 (2001)

- Reasonable restrictions are valid exercises of the police power and not unconstitutional takings under the power of eminent domain.
- Restrictions are not per se unreasonable simply because they limit the extraction of minerals.... [A] municipality can create a use zone excluding surface mining altogether....

Virginia: The Problem (4)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- On July 15, 2008, Dawn Klassen, the Land Acquisition Manager for the County, contacted the Developer about a **possible sale of two lots in the subdivision to the County for use as the new Aldie Fire & Rescue Station.**
- During this time, the Developer was experiencing financial hardships, and, on July 31, 2008, the Developer received a Notice of Default from counsel for BB&T.
- On October 10, 2008, the Developer and the County entered into a Real Estate Sales Contract, whereby the County purchased Lots 18 and 19.

Virginia: Two types of Restrictions (6)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- Virginia recognizes two types of restrictive covenants: "the **common law doctrine of covenants running with the land** …
- …and restrictive covenants in equity known as **equitable easements and equitable servitudes."**

Virginia: Two types of Restrictions (7)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- The **doctrine of restrictive covenants** in equity provides that:
- [W]hen, on a transfer of land, there is a covenant or even **an informal contract or understanding that certain restrictions** in the use of the land conveyed shall be observed, …
- …the **restrictions will be enforced by equity,** at the suit of the party or parties intended to be benefited thereby,…
- … **against any subsequent owner of the land except a purchaser for value without notice of the agreement.**

Virginia: Common Scheme Requirements (8)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- In this case, **to establish an equitable servitude**, the plaintiffs must **show that the Developer intended a common scheme** of development for Little River Farms that restricted the use of the lots to single family residential…
- that this restriction was intended for the benefit of the residents in Little River Farms; …
- …and that the County had actual or constructive notice that the lots in Little River Farms were restricted to single family residential use.

Virginia: Common Scheme Requirements (9)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- To determine whether the Developer intended to restrict the use of the property, the Court must look to …
- …"**the words used in the restriction, the plats, the deeds, such surrounding circumstances** …
- …as the parties are presumed to have **considered when their minds met,** the purpose to be achieved by the covenant, and the use of the property."

Virginia: Common Scheme Requirements (10)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- …it is clear that a determination of **whether the developer intended a common scheme of use is fact specific** and that the **Court must consider the facts unique to this case.**

Virginia: Restriction is Enforceable (12)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- Therefore, although the facts in other cases may have included recorded restrictions, the Court does not find this fatal under the facts of this case.
- An equitable servitude may be established based upon "a covenant or even an informal contract or understanding that certain restrictions" apply.
- **Here, there can be no doubt that there was an understanding that Little River Farms would be restricted to residential use.**

Virginia: Actual or Constructive Notice (14)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- Plaintiffs must now show that the County had actual or constructive notice that Little River Farms was intended to be restricted to residential use. The Virginia Supreme Court has noted that:
- It is a general rule that **whatever puts a person on inquiry amounts in judgment of law to notice,** provided the **inquiry becomes a duty,** and would lead to a knowledge of the facts by the exercise of ordinary intelligence and understanding.

Virginia: Actual or Constructive Notice (15)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- A person who has sufficient information to lead him to a fact is deemed conversant with it, and a person who has notice of facts which would cause a reasonably prudent person to inquire as to further facts is chargeable with notice of the further facts discoverable by proper inquiry.

Virginia: Recording Statute vs. Inquiry Notice (16)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- The County focuses its analysis on what was recorded and the fact that there was no language of restriction as to the use of Little River Farms on the record.
- **The proper analysis, however, is not whether there were words of restriction on the record,** but whether there was anything, on the record or otherwise, …
- …**that would put the County on inquiry that Little River Farms was intended to be restricted to residential use** and that would lead to this knowledge.

Virginia: No Haven from Title Search (17)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- The County's expert, Robert Gordon, relied heavily on the fact that the title search did not reveal a restriction; however**, the title search itself is not a safe haven.**
- If there was a restriction on the record, then there would be no need for an equitable servitude.
- The Court finds significant that the Commitment for Title Insurance issued to the County for Lots 18 and 19 specifically excludes "[e]asements, or claims of easements, not shown by the public records."

Virginia: No Haven from Title Search (18)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- The fact that the County had to "undo" the residential use designation on the site plan should have put the County on inquiry that the property was restricted, at least in a certain sense, and part of a common scheme.
- Accordingly, the Court finds that the **County had notice, both actual and constructive, that Little River Farms was restricted to residential use.**

Virginia: Zoning doesn't control (19)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- The County also argued that building a fire and rescue station on Lots 18 and 19 is **not restricted because it is a use allowed by the zoning ordinance.**
- **Whether a use is permissible under the zoning ordinance, however, is not dispositive of whether the use is restricted by an equitable servitude.**
- **Just as the County cannot claim a safe haven in the title search, nor can it claim a safe haven in the zoning ordinance.**

Virginia: Zoning doesn't control (20)

Oliver v. Loudoun County:
85 Va. Cir. 15; 2011

- The Court further believes that equity will be served by granting the plaintiffs an equitable servitude. Although the **homeowners themselves had constructive notice that the Covenants had not in fact been recorded**, the evidence is overwhelming that the County should have known of the intent for Little River Farms to be restricted to residential use.
- The **Court understands the importance of the County's ability to acquire property for fire and rescue stations.**
- Nonetheless, the evidence is clear that the Developer intended that Little River Farms be restricted to residential use for the benefit of the purchasers,

Regulation & Zoning vs. Easements

NJ – Planning Board is not "The Court" (9)

Kline v. Bernardsville Ass'n, Inc., 267 N.J. Super. 473 (1993)

- We are equally satisfied that **a planning board is not vested with the power to compel relocation of an easement** at the expense of a property owner who is not an applicant.
- A planning board's powers are derived from the Municipal Land Use Law (N.J.S.A. 40:55D-1 to -136) and implementing ordinances.

NJ – Planning Board is not "The Court" (10)

Kline v. Bernardsville Ass'n, Inc., 267 N.J. Super. 473 (1993)

- **The Law does not grant a planning board the authority to compel relocation of an easement so as to impair or burden the rights of a non-applicant.**
- While a planning board may condition site-plan approval on the applicant's granting a right of way to another property owner, it may not compel relocation of an easement to the prejudice of the easement holder.
- **We, therefore, reverse the judgment of the Law Division.**

Rhode Island Zoning vs. Easement (1)

Piccirilli v. Sheppard, 2002 R.I. Super.

- An easement is an interest in land that typically regulates the use of the land to which it is attached.
- "**An easement is not a form of zoning** and the **administrative agencies empowered to deal with zoning matters have no jurisdiction to determine the nature or extent of claimed easements.**"

Rhode Island Zoning vs. Easement (2)

Piccirilli v. Sheppard, 2002 R.I. Super.

- At the hearing, appellant Vincent J. Piccirilli stated that the deed granted "an undefined easement," which he further described as **"a floating easement, wherever I want to look."** Tr. at 93. MCM objected to the Board admitting the deed into evidence because it merely "purported to be a deed" and "was not certified by the Town Clerk's office or the Registry of Deed [sic]." Tr. at 92. Though the Zoning Board put the deed into the record, it found that the easement was "a legality between [the appellants] and Mr. Sheppard."

Rhode Island Zoning vs. Easement (3)

Piccirilli v. Sheppard, 2002 R.I. Super.

- Under *Lett,* it is not within the jurisdiction of the Zoning Board to determine the nature or extent of this claimed easement.
- Accordingly, appellants' claim that the Zoning Board erred in granting the special use permit to MCM because the proposed construction would violate their easement must be rejected.

Penn: Zoning vs. Easement Creation (1)

Fleishon v. Zoning Board 1955 Pa. Dist. & Cnty. Dec.

- In the past, builders developed the street frontages of this city block without giving any apparent consideration to what might be done with the substantial tract left undeveloped in the center of the block.
- They erected 27 houses at the north on Woodcrest Avenue,
- …eight houses at the east on Seventy-fifth Street,
- …37 houses at the south on Malvern Avenue, and
- …seven houses at the west on Seventy-sixth Street.

Penn: Zoning vs. Easement Creation (2)

Fleishon v. Zoning Board 1955 Pa. Dist. & Cnty. Dec.

- Along the rear of these houses they constructed 15-foot wide supplementary driveways, clearly intended for use by the adjoining house owners as a means of access to the private garages built at the rear of their homes.

Penn: Zoning vs. Easement Creation (4)

Fleishon v. Zoning Board 1955 Pa. Dist. & Cnty. Dec.

- The owner-applicant, **claiming a right-of-way over the 15-foot wide supplementary driveways** above referred to, proposes to use those driveways as the primary means of access to the 54 multiple dwelling units he plans to erect on this irregular lot, and to the outdoor parking area to be created at its easterly end.

Penn: Zoning vs. Easement Creation (5)

Fleishon v. Zoning Board 1955 Pa. Dist. & Cnty. Dec.

- However, a reference to paragraph 4, and to the map, in the stipulation dated June 30, 1955, filed herein, shows that **lot no. 1, on which more than half of the proposed 54 dwelling units are to be erected, has no easement whatever relating to these driveways,** or any of them.
- This court would be remiss if it failed to point out that ***the mere fact certain parts of this assembled tract of land enjoy an easement over the 15 foot driveways does not extend that right to lot no. 1 or to the persons who will occupy housing units erected thereon.***

Penn: Zoning vs. Easement Creation (6)

Fleishon v. Zoning Board 1955 Pa. Dist. & Cnty. Dec.

- Since, admittedly, section 26 (10) of the **zoning ordinance requires that any multiple dwelling shall have adequate access to a street or driveway,** …
- …it necessarily follows that the zoning administrator and the **zoning board cannot shut their eyes to the question whether the proposed housing units will or will not enjoy an easement** (and the extent thereof) over existing private driveways which the units are to use.
- The establishment of such easement by the applicant by affirmative proof is one of the factors which they should insist on in every such situation.

NJ- Zoning vs. Easements (1)

Kip's Ridge Condo. Ass'n v. Township of Montclair:2009 N.J. Super. Unpub.

- The dispute is centered on curb boxes located in each unit in the Association.
- **Generally, curb boxes are located on a public right-of-way or as close to it as possible.** Under the traditional arrangement, the municipality is responsible for the lines from the water main to the box and the property owner is responsible from the curb box to the dwelling.
- However, for some undetermined reason, the Association's developer placed some curb boxes at a distance from the right-of-way and well within the property of each unit owner.

NJ- The Agreement (2)

Kip's Ridge Condo. Ass'n v. Township of Montclair:2009 N.J. Super. Unpub.

- the Association granted Montclair an easement:
- [T]o install and/or operate, expand, rebuild, relocate, locate, remove, inspect, test, replace, reconstruct, repair and maintain sanitary sewerage facilities, . . . but not including laterals or stubs running from [Montclair]'s 8 inch PVC sewer main to any buildings located on Owner's lands and also including the main water line and hose connections and other necessary appurtenances . . . .
- **The Easement did not address the laterals or spurs from the water main, only from the sewer main.**

NJ- Maintenance on Private Land (3)

Kip's Ridge Condo. Ass'n v. Township of Montclair:2009 N.J. Super. Unpub.

- the Association contends that "Montclair Provides by Ordinance that All Residents' Responsibility for Water Service Lines Terminates at the Curb Box."
- The record suggests Montclair has consistently interpreted the Ordinance, and its general policy, as requiring it to maintain water lines only to the extent they are located on public lands.
- Montclair has refrained from performing work on water lines located on private property out of the concern it might incur additional expenses or liability for restoring the property to its prior condition.

NJ- Maintenance on Private Land (4)

Kip's Ridge Condo. Ass'n v. Township of Montclair:2009 N.J. Super. Unpub.

- The desire to avoid additional expense and liability is a valid concern when delineating the scope of Montclair's maintenance obligations.
- This is particularly true where Montclair has no control over the installations on that private property such as flower beds, fences, trees, and electric and other utility lines.
- The Ordinance does not require that Montclair maintain its service lines up to the curb box without regard for the curb box's location.

NJ- Access vs. Repairs (5)

Kip's Ridge Condo. Ass'n v. Township of Montclair:2009 N.J. Super. Unpub.

- Montclair further emphasizes the judge's holding that the Easement only granted Montclair rights of access; …
- ..it did not impose additional obligations on Montclair not already found in the Bill of Sale. Montclair contends that, because the terms of the Bill of Sale are clear and unambiguous, there is no authority to rewrite the agreement.

Unilateral Changes to Utility Easements??

Indiana: Guidelines vs StraightJacket (1)

Duke Energy Indiana v. J & J Development: No. 10A04-1605-PL-1084. (2018)

- Duke had generated a document entitled "Electric Transmission Right-Of-Way Guidelines/Restrictions Valid For Ohio, Indiana and Kentucky."
- McNamee sent a copy of this document, reflecting that it had been revised on November 20, 2014, to Corbett.
- The document contained the statement that it was developed to provide Duke's interpretation of and answers to the most frequently asked questions about how property owners-presumably those with a servient interest-may use Duke's electric transmission rights of way.

Indiana: Guidelines vs StraightJacket (2)

Duke Energy Indiana v. J & J Development:
No. 10A04-1605-PL-1084. (2018)

- The document further declared the authority to change the list of restrictions at any time without notice.
- Duke further took the position in the document that all activity by others within a Duke easement was required to receive prior review and approval by a Duke asset protection right-of-way specialist.

Indiana: Guidelines vs StraightJacket (1)

J & J Development v Duke Energy Indiana
No. Case No. 10C04-1508-PL-000091 (2019)

- Subsequent to the dedication of Palermo Street, the Developer and various utility service providers had legal authority to install and operate public utility improvements within the right-of-way, notwithstanding that a portion of such right-of-way is encumbered by the Transmission Easement; provided, however, that such improvements did not unreasonably obstruct or interfere with Duke Energy's use of the Transmission Easement for its intended purpose (i.e., the transmission of electricity through the easement).

Indiana: Guidelines vs StraightJacket (2)

J & J Development v Duke Energy Indiana
No. Case No. 10C04-1508-PL-000091 (2019)

- The Transmission Easement does not contain any of the provisions of the Duke Restrictions that Duke Energy now seeks to enforce in compelling the removal of the infrastructure improvements within the Transmission Easement.
- An easement cannot be changed to subject the servient estate to a greater burden than was originally agreed upon without the consent of the owner of the servient estate.

Indiana: Guidelines vs StraightJacket (3)

J & J Development v Duke Energy Indiana
No. Case No. 10C04-1508-PL-000091 (2019)

- Duke Energy asserts that the Developer should be required to remove the Subdivision infrastructure improvements as they make maintaining and repairing Duke Energy's facilities more dangerous and costly.

Indiana: Guidelines vs StraightJacket (4)

J & J Development v Duke Energy Indiana
No. Case No. 10C04-1508-PL-000091 (2019)

- In its briefs and at hearing, **Duke Energy claims that it is merely seeking to enforce the terms of the Transmission Easement,** and is not in any manner attempting to enforce the Duke Restrictions.
- This claim is contrary to Mr. McNamee's initial letter demanding removal of the Developers infrastructure improvements as claimed encroachments in which he expressly cited the Duke Restrictions as authority supporting such demand.

Indiana: Guidelines vs StraightJacket (5)

J & J Development v Duke Energy Indiana
No. Case No. 10C04-1508-PL-000091 (2019)

- Perhaps most problematic, the Duke Restrictions expressly provide that "[t]he list of restrictions is subject to change at any time and without notice."
- The extent to which Duke Energy seeks to control the use of the land within the Transmission Easement, as reflected in the Duke Restrictions, significantly exceeds the express terms of the Transmission Easement.

Significance of Tax Maps

Penn: Retracement by Tax Map? (1)
In re Viola, 838 A.2d 21 (2003)

- Property Owners wish to develop the property, but they encountered difficulty dealing with Adams and Cranberry Townships because of the municipalities' dispute over jurisdiction.
- As a result, Property Owners filed a petition for the appointment of a border commission to determine the exact location of the boundary on the subject property pursuant to Section 302 of the Second Class Township Code

Penn: Several Theories Put Forward (2)
In re Viola, 838 A.2d 21 (2003)

- Property Owners …asserted the boundary should be established on the western edge of the subject property...
- The Border Commission rejected this approach because it did not attempt to discover the original border.
- Rather, the approach sought relocation of the boundary from its 1854 position…

Penn: Let's Use GPS…(3)
In re Viola, 838 A.2d 21 (2003)

- Adams Township presented the testimony of J. David Newcomer (Adams Township's Engineer).
- He opined the boundary could be located using a technique that employed mathematical division to interpret the 1853 division order.
- Specifically, Adams' Township's Engineer located the boundary by (i) determining the southeast and southwest corners of the county, (ii) measuring the distance between the two points using GPS technology,

Penn: Let's Use Tax Maps!…(4)
In re Viola, 838 A.2d 21 (2003)

- Cranberry Township presented the testimony of David C. Baker (Cranberry Township's Engineer).
- He opined the original boundary's location could not be determined due to the destruction of all direct evidence concerning its location.
- He advocated the best methodology was to use the maps of the Tax Assessment Office of Butler County (tax maps).

Penn: Tax Maps Are Convenient…(5)
In re Viola, 838 A.2d 21 (2003)

- Cranberry Township asserts the doctrine of equitable estoppel mandates the boundary be located in accordance with the tax maps.
- In this case, Cranberry Township claims development within the two municipalities is consistent with the tax map, including roads and a municipal pump station.
- Further, it notes there would be an impact on other private properties arising from movement of the township boundary.
- The Border Commission rejected any estoppel argument…

Penn: Lots Combined or Not? (1)
Springfield Twp. v. Halderman, 840 A.2d 528 (2004)

- Based on those findings and conclusions, the trial court ordered the Haldermans to deed separately surveyed tracts of land back to themselves as a single lot and prohibited the Haldermans from selling either tract without subdivision approval from Springfield Township We reverse.
- Consequently, the Haldermans maintain that they merely re-deeded the two tracts and did not subdivide any property.
- We agree.

Penn: Tax Maps and Title (2)
Springfield Twp. v. Halderman, 840 A.2d 528 (2004)

- The Township's Subdivision and Land Development Ordinance (SALDO) defines a subdivision, in relevant part, as:
- *[t]he division or re-division of a lot, tract or parcel of land by any means into two (2) or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for the distribution to heirs or devisees, transfer of ownership or building or lot development....*(SALDO § 202.)

Penn: Non-Conforming Lots (3)
Springfield Twp. v. Halderman, 840 A.2d 528 (2004)

- Article 11 of the Township's Zoning Ordinance provides, in relevant part:
- *Where two or more adjacent lots, one or more of which is non-conforming, are owned by the same owner, and the ownership of the lots is concurrent, such lots shall be combined to create conforming lots, or to lessen the nonconformity if it is not possible to create all conforming lots.*

Penn: Non-Conforming Lots (4)
Springfield Twp. v. Halderman, 840 A.2d 528 (2004)

- The term "merger" is used in zoning law and in the construction of a zoning ordinance to describe the effect of a zoning ordinance on lots held in common ownership and is related to the issue of physical merger of adjoining lots.

Penn: Non-Conforming Lots (5)
Springfield Twp. v. Halderman, 840 A.2d 528 (2004)

- Thus, because Tracts 3 and 4 are of adequate acreage, they, by definition, are not non-conforming lots.
- Consequently, neither the doctrine of merger nor Article 11 can serve as the basis to merge the two tracts, and the trial court erred in con-eluding otherwise.
- Thus, it was improper for the trial court to order the Haldermans to deed Tracts 3 and 4 back to themselves as a single lot and to prohibit them from selling (conveying) either tract without prior subdivision approval.

Tax Maps and Title: New York (1)
Watson v. Colwell: 2008 NY Slip Op 30006(U)

- The essence of Plaintiffs' claim against the Movants is that Watson's property interests were damaged when Movants allegedly drew an erroneous boundary line on the tax maps.
- As Movants point out, tax maps do not create, alter, or destroy the ownership of real property, and the maps in question carry an explicit warning that they are prepared for tax purposes only and are not to be used for surveying or conveyancing.
- Real Property Tax Law § 503 [5] states …

Tax Maps and Road: New Jersey (1)
Point Pleasant v. Rollano: 2008 N.J. Super. Unpub.

- Specifically, the Borough sought an order to compel appellants to:
- 1) remove the gate that had been added to the chain link fence at the northerly property line of appellants' property; and
- 2) construct a six-foot-high stockade fence along the northerly property line, which effectively would have precluded appellants' use of Cottage Place as a means of ingress and egress to and from their property.

Contrary to the Tax Map…: NJ (2)
Point Pleasant v. Rollano: 2008 N.J. Super. Unpub.

- Kozik and Fitzgerald filed their third-party complaint, contending that …
- …"[c]ontrary to what the current Tax Map of the Borough of Point Pleasant depicts, Cottage Place does not extend to Lot 31 in Block 145 on the Tax Map of the Borough of Point Pleasant . . . ."
- "[t]he records of the Ocean County Clerk fail to reveal any instrument or map of record dedicating or extending the portion of Cottage Place, which lies between Lots 28 and 29 in Block 145 of the Tax Map . . . to Lot 31 . . .

Tax Maps conflict with title: NJ (3)
Point Pleasant v. Rollano: 2008 N.J. Super. Unpub.

- On the first day of trial, the Borough presented the trial court with a title search, which indicated that the …
- …Borough did not own a right-of-way in the grassy area, but only in the paved portion of Cottage Place, which stopped at the northerly property line of Kozik and Fitzgerald's properties.
- Contrary to the Tax Map, showing Cottage Place continuing past Kozik and Fitzgerald's properties to the northerly line of appellants' property, the title search verified that the grassy area was owned of record by Kozik and Fitzgerald.

Only Improved portion Dedicated: NJ (4)
Point Pleasant v. Rollano: 2008 N.J. Super. Unpub.

- Judge Grasso rendered a sixteen-page written opinion determining that the unimproved portion of Cottage Place had never been dedicated as a public thoroughfare, by implication or otherwise, and that the grassy area was owned in fee simple by Kozik and Fitzgerald.
- The judge also determined that appellants had no right of ingress and egress to and from their property through the grassy area.

Tax Maps conflict with title: NJ (5)
Point Pleasant v. Rollano: 2008 N.J. Super. Unpub.

- On March 21, 2007, Judge Grasso entered a confirming order, which:
- 1) entered judgment in favor of Kozik and Fitzgerald, "quieting title to the unimproved portion of Cottage Place which lies between Lots 28 and 29 in Block 145 . . . by declaring each of said [parties] as the owners of the unimproved portion of said tract lying between their respective parcels and the extended centerline of Cottage Place";
- 2) determined that the improved portion of Cottage Place was dedicated to public use;

Tax Maps conflict with title: NJ (6)
Point Pleasant v. Rollano: 2008 N.J. Super. Unpub.

- 3) determined that the remaining unimproved portion of Cottage Place, …is deemed not to have been dedicated either expressly or by implication for public use and the public therefore has never acquired a right of use therein"; …
- …5) dismissed appellants' counterclaim seeking full and complete access to and from their property through the unimproved portion of Cottage Place as a public thoroughfare;
- We affirm substantially for the reasons articulated by Judge Grasso in his cogent, written opinion of March 2, 2007

SC – Anderson County GIS Disclaimer ACPASS Website

- **Portions of such information may be incorrect** or not current.
- **Any person or entity who relies on any information obtained from this web site does so at his or her own risk.**
- In addition, nothing contained within this web site is an official record of the County or the elected officials responsible therefore.
- **All official records of the County and the offices of countywide elected officials are on file in their respective offices and may be reviewed by the public at those offices.**

SC – Zoning Maps: (1)

Carolina Chloride, Inc. v. Richland County: 394 S.C. 154 (2011)

- In November 1996, Carolina Chloride purchased 7.67 acres of land from IBM for $85,000.00.
- The land was located on Killian Road in Richland County, near some railroad tracks. Carolina Chloride intended to use the property for storing and distributing calcium chloride, a chemical used to control dust and ice on roads, as well as to treat drinking water.
- This use required M-2 zoning, which designated a Heavy Industrial District.

SC – Zoning & Tax Maps: (2)

Carolina Chloride, Inc. v. Richland County: 394 S.C. 154 (2011)

- In a letter to Morgan dated December 5, 1996, Brown stated that it was his "opinion" that the property "should properly be zoned M-2, Heavy Industrial." Brown added,
- "The tax map was in error and has been amended to reflect the proper zoning of M-2, Heavy Industrial." (Emphasis added.)
- There is **no indication in the record, however, that Brown ever produced an Official Zoning Map or ordinance** showing the property was zoned M-2 by County Council.

SC – Lot Improved based on Report: (3)

Carolina Chloride, Inc. v. Richland County: 394 S.C. 154 (2011)

- Over the next several years, Carolina Chloride added improvements of more than $400,000.00 to the property, including a mini-warehouse business.
- As part of this process, Carolina Chloride requested and received the necessary County approval.
- **The employees indicated on the various permits and other documents that the property was zoned M-2.**

SC – Zoning now in Question: (4)

Carolina Chloride, Inc. v. Richland County: 394 S.C. 154 (2011)

- On February 13, 2003, **John Hicks,** whose County letterhead identified him as the **Development Services Manager,** wrote to Morgan at Carolina Chloride and…
- … advised him that the Carolina Chloride property was **actually zoned RU (Rural District), not M-2, …**
- …and that the **existing facilities were non-conforming uses that could legally continue,** but could not be expanded.

SC – Zoning now in Question: (5)

Carolina Chloride, Inc. v. Richland County: 394 S.C. 154 (2011)

- Morgan submitted Brown's 1996 letter stating it was his opinion the property was zoned M-2 to County officials and asked them to take corrective action, but they declined to do so.

SC – Claim against the County: (6)

Carolina Chloride, Inc. v. Richland County: 394 S.C. 154 (2011)

- In contrast, **Carolina Chloride contends its negligence claim** is based not only on the **County's statements** regarding the property's zoning designation, …
- …but also on the **County's failure to exercise reasonable care in maintaining and interpreting the Official Zoning Map** and associated records.
- Carolina Chloride asserts the County committed negligence by virtue of the **failure of Brown in 1996 or Hicks in 2003** to advise Carolina Chloride of the correct legal zoning classification of its property.

SC – Tax Map vs. Zoning Map: (7)

Carolina Chloride, Inc. v. Richland County: 394 S.C. 154 (2011)

- Similarly, in the current appeal, there was a mistake made in advising the property owner of the property's legal zoning classification.
- **Brown incorrectly advised Carolina Chloride, after its purchase, that the property was zoned M-2 based on his review of the "tax map."**
- **Brown did not state that he had ever reviewed the Official Zoning Map,** however, and the only documents in the record indicate that **the Official Zoning Map has consistently listed this property as being zoned RU,** not M-2.

SC – Don't Expect Too Much…: (8)

Carolina Chloride, Inc. v. Richland County: 394 S.C. 154 (2011)

- "To subject county officials to the prospect of liability for innocent misrepresentation would discourage their participation in local government or inhibit them from discharging responsibilities inherent in their offices.
- Their **reluctance to express opinions would frustrate dialogue which is indispensable to the ongoing operation of government."**

SC – Know the Law…: (9)

Carolina Chloride, Inc. v. Richland County: 394 S.C. 154 (2011)

- **All individuals** are presumed to know the law, including the nature and extent of a government official's authority, …
- …and they are charged with the knowledge that an ordinance may be changed only through compliance with proper procedures.

SC – Know the Law…: (10)

Carolina Chloride, Inc. v. Richland County: 394 S.C. 154 (2011)

- Although **it is certainly unfortunate that a mistake occurred** in this case, …
- …**Carolina Chloride had no legal right to rely solely upon the representations of County personnel** and …
- …**should have consulted the official record** to determine the legal zoning classification of its property.

Railroad Valuation Maps

Valuation Maps (1)

SPECIFICATIONS

FOR

MAPS AND PROFILES

AS PRESCRIBED BY THE

INTERSTATE COMMERCE COMMISSION

IN ACCORDANCE WITH SECTION 19A OF THE ACT TO REGULATE COMMERCE

Valuation Maps: Order (3)

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of January, A. D. 1914

The subject of specifications for maps and profiles to be prescribed for and applied by steam railway carriers being under consideration, the following order was entered:

It is ordered, That the specifications for maps and profiles which are set out in printed form to be hereafter known as first issue, a copy of which is now before this Commission, be, and the same are hereby, approved; that a copy thereof, duly authenticated by the Secretary of the Commission, be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the division of valuation; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

Valuation Maps: Specifications (6)

SPECIFICATIONS FOR THE PREPARATION OF THE MAPS AND PROFILES WHICH SHALL BE FILED WITH THE INTERSTATE COMMERCE COMMISSION TO SUPPORT THE VALUATION OF PROPERTY OF RAILWAY CARRIERS

I. GENERAL

1. INTENT.

In order that the Interstate Commerce Commission may investigate, ascertain, report, and record the value of property of railway carriers as it now exists and as it hereafter may be extended, improved, or changed, it is essential that certain maps and profiles shall be prepared by the carriers and filed with the Commission.

It is not the intent of the Commission to require the unnecessary construction of maps and profiles. All maps and profiles, both old and new, must be furnished upon sheets of the standard sizes and upon material of the kind specified, and they must be produced or reproduced by the process specified.

All new maps and profiles, whether covering new construction or old construction, must be strictly in accordance with these specifications.

Washington: Valuation Maps (1)

Lucier v. United States:
138 Fed. Cl. 423; 2018

- The four right of way deeds were individually entered into ...in 1890.
- **According to the ICC valuation map,** the "Tacoma Olympia and Grays Harbor Railroad Company conveyed its entire property to the United Railroads of Washington by deed on Aug. 5, 1890," and "[t]he United Railroads of Washington conveyed their entire property to Northern Pacific Railway Company by deed dated Feb. 14, 1898 . . ."

Washington: Valuation Maps (2)

Lucier v. United States:
138 Fed. Cl. 423; 2018

- The ICC valuation schedule and ICC valuation map, submitted by the Northern Pacific Railway Company in 1917, indicate that the section ... was "acquired by adverse possession."
- The parties have not submitted to the court a deed conveying to any of BNSF's predecessors-in-interest the section of the railroad corridor in valuation parcel number 13, which the ICC valuation schedule and ICC valuation map indicate was "acquired by adverse possession."

Washington: Valuation Maps (3)

Lucier v. United States:
138 Fed. Cl. 423; 2018

- Notwithstanding the use of the term "adverse possession" in the ICC valuation schedule and ICC valuation map, ...
- ...plaintiffs in Lucier and Beattie allege BNSF's predecessor-in-interest only obtained prescriptive easements in the sections of the railroad corridor that abuts the parcels owned by Lucier plaintiffs Andrew S. Lucier and Jan Pettigrew

Pennsylvania: Valuation Maps (1)

Southeastern PA. Transportation Authority v. CSX: CIVIL ACTION No. 04-4785; U.S. Dist. 2005

- 10. Attached to the quitclaim deed transferring the right-of-way from Conrail to SEPTA, was a railroad valuation map, dated April 24, 1995, prepared by Conrail. Trial Tr. Oct. 3, 2005 ("Tr. I") at 17; Ex. P-75.
- 11. **A railroad valuation map, which does not contain a metes and bounds description,** is prepared by a railroad to record the assets and property, including property improvements, owned or controlled by the railroad.

Pennsylvania: Valuation Maps (2)

Southeastern PA. Transportation Authority v. CSX: CIVIL ACTION No. 04-4785; U.S. Dist. 2005

- 14. Andrew C. Putnam, the plaintiff's expert, then an employee of Hunt Engineering Company, performed field work as part of a 1999 survey of the right of way from 30th Street to 27th Street and 500 feet into the tunnel which is 20 feet below street grade.
- 15. Putnam, as project manager, resurveyed the area in 2003 in connection with this dispute over the City Branch. Tr. I at 41.

Pennsylvania: Valuation Maps (3)

Southeastern PA. Transportation Authority v. CSX: CIVIL ACTION No. 04-4785; U.S. Dist. 2005

- 16. Because ***there were no monuments for use in the first survey,*** **Putnam used the survey marks set by the City of Philadelphia's surveyors using City plans.**
- 17. Putnam reviewed and relied upon, together with all the other information he had assembled, railroad valuation maps, track agreements, physical features on the land, and official street plans.
- 18. Putnam conducted his survey according to the protocol set forth in Boundary Retracement Principles and Procedures for Pennsylvania by Knud Everett Hermansen, a learned treatise accepted by both parties.

Pennsylvania: Valuation Maps (4)

Southeastern PA. Transportation Authority v. CSX: CIVIL ACTION No. 04-4785; U.S. Dist. 2005

- 28. The stone masonry wall on the Fairmount Park side first appeared on the October 27, 1916 valuation map jointly prepared by the SRESRRC and the Philadelphia and Reading Railway Company. Ex. P-68.
- 30. The railroad valuation maps reference the July 3, 1885 Ordinance and the November 6, 1885 track rights agreement between the original owners of the right of ways, The Philadelphia and Reading Railroad Company and the SRESRC, which established where the tracks would connect and where the grades of the tracks would coincide.

Pennsylvania: Valuation Maps (5)

Southeastern PA. Transportation Authority v. CSX: CIVIL ACTION No. 04-4785; U.S. Dist. 2005

- 32. The railroad valuation maps were consistent in defining the location of both rights-of-way.
- 33. The joint railroad valuation map dated October 27, 1916 shows the southerly boundary of the SRESRRC right-of-way as five feet beyond the masonry wall on the Fairmount Park side, and the total width of the SRESRRC right-of-way is shown at a scaled distance of 25 feet.

Pennsylvania: Valuation Maps (6)

Southeastern PA. Transportation Authority v. CSX: CIVIL ACTION No. 04-4785; U.S. Dist. 2005

- 35. The southerly Pennsylvania Avenue street line on the Putnam survey is consistent with the valuation maps.
- 36. Putnam determined that the width of the CSX right-of-way is 25 feet by consulting, among other documents, the 1885 city plan, which establishes the center line of the SRESRR right-of-way at 17 feet, and the railroad valuation maps, which confirmed that the width of the right-of-way from the southerly boundary line n the Fairmount Park side to the right-of-way boundary is 25 feet.

Pennsylvania: Valuation Maps (7)

Southeastern PA. Transportation Authority v. CSX: CIVIL ACTION No. 04-4785; U.S. Dist. 2005

- The finder of fact may weigh the credibility of one expert over another and credit one expert report over another, and may accept all, some or none of an expert's opinions.
- 3. SEPTA has sustained its burden of proving the boundaries of the parties' respective rights-of-way in the City Branch.

Subdivision Regulations

Effect of an Ordinance: Md. (1)

Hillsmere Shores Improvement v. Singleton: 182 Md. App. 667; 959 A.2d 130; 2008

- In its final two contentions, **appellant claims that certain provisions of the County Code effectively limit the doctrine of adverse possession** with respect to property such as the Community Beach. On this basis, appellant claims that neither appellees nor anyone else can ever claim title to a portion of such land by adverse possession.
- **Hillsmere cites no case law in support of its contentions.**
- In Maryland, the original source of the adverse possession doctrine was the Limitation Act of 1623, 21 James I, c.16, an English statute

Effect of an Ordinance: Md. (2)

Hillsmere Shores Improvement v. Singleton: 182 Md. App. 667; 959 A.2d 130; 2008

- Our research has disclosed **no Maryland cases, and only one decision of a foreign jurisdiction**, *Wanha v. Long, 255 Neb. 849, 587 N.W.2d 531 (Neb. 1998)*, in which arguments similar to appellant'swere addressed.
- In Wanha, the **Supreme Court of Nebraska considered whether "platted and subdivided land within a municipality cannot be adversely possessed,"** under a Nebraska statute which forbade certain owners of real estate "'to subdivide, plat, or lay out said real estate...
- The Nebraska court rejected the argument, determining that the statute had "no application to the doctrine of adverse possession and is not in conflict with it."

Effect of an Ordinance: Md. (3)

Hillsmere Shores Improvement v. Singleton: 182 Md. App. 667; 959 A.2d 130; 2008

- The court reasoned that the **source of an adverse possessor's title is "'[h]is own possession,'" rather than "'a transfer** or grant by operation of law from the former title holder,'"
- ...and thus that, once the statutory period has run, **"there is nothing left for the adverse possessor to do to gain title,** i.e., no application to . . . any . . . authority need be made. . . ."
- ... Moreover, the court observed that, "[b]y its own language, **[the state statute] applies only to the subdivision of property by its owner."**

Effect of an Ordinance: Md. (4)

Hillsmere Shores Improvement v. Singleton: 182 Md. App. 667; 959 A.2d 130; 2008

- In rejecting appellant's contention, the circuit court opined:
- "[A]dverse possession **does not meet the definition of subdivision** found in **Article 17 § 1-101(60) of the Anne Arundel County Code** because it does not divide land by deed as defined in Article 17 § 1-101(43)." We agree with the circuit court.
- Adverse possession of real property is achieved by occupying it for the statutory period, **not by the recordation of a deed or plat** in the County land records.

Effect of an Ordinance: Md. (5)

Hillsmere Shores Improvement v. Singleton: 182 Md. App. 667; 959 A.2d 130; 2008

- Accordingly, **adverse possession is not "subdivision" within the meaning of the County Code.** Moreover, subject to exceptions not applicable here, County Code § 17-2-106 provides: **"The owner of contiguous properties may consolidate the properties by deed without initiating subdivision..."** Thus, we do not perceive the present County Code to affect appellees' ability to adversely possess the disputed properties.
- **Even if** the ordinances that appellant cites applied by their terms to an adverse possession claim, **there would be a significant question whether a County ordinance could affect the operation of adverse possession.**

Tax Maps vs. Boundary Agreement: NJ (1)

Blain v. Smithson: 2014 N.J. Super. Unpub.

- Originally, John's parents, John V. Blain, Jr. and Katherine Blain (senior Blains) owned all three lots. In 1964, the senior Blains transferred Lot 21 to William C. and F. Loretta Greiner (senior Greiners), Nathan's grandparents.
- Five days later, the senior Blains transferred Lot 22 to the senior Greiners.
- The record also suggests F. Loretta Greiner is a member of the Blain family.
- William passed away on January 6, 2001; Loretta had predeceased him. Donna Frank, William's daughter and defendants' aunt, administered his estate.

Tax Maps vs. Boundary Agreement: NJ (2)

Blain v. Smithson: 2014 N.J. Super. Unpub.

- John, on behalf of Katherine, approached Frank about relocating the boundary line between their respective properties.
- A **proposed survey was drawn,** relocating the western lot line of Katherine's property **twenty feet beyond its current location** into what was then part of the property owned by William's estate.
- Frank **presented the proposed subdivision to the municipal zoning official to request approval,** who informed her: **"It will never happen."**

Tax Maps vs. Boundary Agreement: NJ (3)

Blain v. Smithson: 2014 N.J. Super. Unpub.

- On **July 12, 2002, Katherine and Frank executed an agreement to adjust the boundary line** between their properties, **adding twenty feet to Lot 20** and reducing adjoining Lots 21 and 22 by twenty feet.
- Among the conditions are statements that the modification was **designed to correct a mistake** when Lots 21 and 22 were originally transferred.
- The boundary line agreement was recorded on July 16, 2002, with the Monmouth County Clerk's Office in Deed Book 8125 at page 4374.

Tax Maps vs. Boundary Agreement: NJ (4)

Blain v. Smithson: 2014 N.J. Super. Unpub.

- The change imposed by the boundary line agreement reduced the side-yard setback of Lots 21 and 22 from 31.54 feet to 11.54 feet and reduced the overall lot size and the frontage of Lots 21 and 22.3
- There is no record of payment being transferred or that Frank sought minor subdivision approval or variances.
- By executor's deed dated October 28, 2003, Frank transferred Lots 21 and 22 to Smithson. The deed did not reference the recorded boundary line agreement.
- **By deed dated November 14, 2003, Katherine transferred Lot 20 to plaintiffs. This deed does reference the boundary line agreement.**

Is agreement enforceable?: NJ (5)

Blain v. Smithson: 2014 N.J. Super. Unpub.

- Defendants claimed they understood the boundary line agreement was unenforceable because …
- …"they went down to the Township and specifically asked whether it was enforceable" and the **Township "said that it wasn't."**
- **Defendants disregarded the boundary line agreement and installed a fence around Lots 21 and 22.**

Map was changed twice: NJ (6)
Blain v. Smithson: 2014 N.J. Super. Unpub.

- An April 28, 2006 letter from the Township's engineer advised plaintiffs the …
- …**Planning Board attorney had concluded the "boundary line agreement did not constitute an illegal subdivision** and the municipal tax maps would be amended to reflect the changes."
- Subsequently, the Township returned the tax map to reflect the original lot lines, showing the boundary line between Lot 20 and Lots 21 and 22 to be in its location prior to the recording of the boundary line agreement.

Agreement violates zoning…: NJ (7)
Blain v. Smithson: 2014 N.J. Super. Unpub.

- The trial judge considered oral argument. Thereafter, she entered an oral opinion **upholding the boundary line agreement between the parties** and filed a conforming order for judgment on November 30, 2012.
- The **focus of defendants' challenge** to the denial of their motion for summary judgment is the **boundary line agreement violates the municipal zoning laws** by ignoring the lot requirements for the zone; modifies the side-yard set-back and reduces the lot size without zoning board variance approval; and effectively imposes an unapproved subdivision.

Agreement violates zoning…: NJ (8)
Blain v. Smithson: 2014 N.J. Super. Unpub.

- Certainly, Frank should have filed for subdivision approval if she intended the change to be a permanent one, recognized by the Township on its tax map.
- However, **even if** all assertions regarding the resultant nonconformity of the lots after imposition of the boundary line agreement are accurate, …
- …defendants' **arguments fail to address the legal ability of adjoining landowners to reach boundary line agreements** that bind each other.

Agreement violates zoning…: NJ (9)
Blain v. Smithson: 2014 N.J. Super. Unpub.

- N.J.S.A. 46:3A-5 states:
- *A certificate, executed by the owners of adjoining lands, certifying that any line, corners and boundaries are allowed and acknowledged by them to be the true boundary between their lands, shall be as fully conclusive and binding as to the parties thereto, their heirs, successors and assigns as though such boundary had been fixed by them by deed or otherwise,*

Agreement violates zoning…: NJ (10)
Blain v. Smithson: 2014 N.J. Super. Unpub.

- *…and any such certificate, when duly acknowledged or proved, may be recorded in the office of the county clerk or register of deeds and mortgages, as the case may be, of the county in which such lands lie, and, when so recorded, the record thereof shall be receivable in evidence and shall be notice in the same manner and to the same effect as though their respective deeds had been so acknowledged or proved and recorded.*

Statute is old, but still good: NJ (11)
Blain v. Smithson: 2014 N.J. Super. Unpub.

- **Although aged, this statute has not been repealed or rendered ineffective** by the adoption of the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -163. **The statute allows parties to draft and record boundary line agreements, such as the one at issue.**
- Here, plaintiffs were gifted Lot 20, subject to the boundary line agreement executed by Katherine. Defendants are assignees of Lots 21 and 22 from the estate who were fully apprised that Frank executed and recorded the boundary line agreement.

Regulatory vs. Title Issues: NJ (12)
Blain v. Smithson: 2014 N.J. Super. Unpub.

- The authority cited by defendants is distinguishable, as the cases they cite involve municipal actions to enforce or ignore its zoning laws. The facts at hand are dissimilar. Obviously, enforceability of the agreement between these parties under the current circumstances is different from one party undertaking development of the lot, as modified, without approval, which should trigger the Township's interest or action.

Regulatory vs. Title Issues: NJ (13)
Blain v. Smithson: 2014 N.J. Super. Unpub.

- As we have noted, there is no dispute regarding the nature of the applicable zoning requirements. However, the boundary line agreement does not equate to a subdivision or liken itself to bulk variance approval.
- Indeed, N.J.S.A. 46:3A-5 allows parties to agree to abide by boundary lines that differ from those drawn on the municipal tax map. Moreover, the statute requires "the parties thereto, their heirs, successors and assigns" to be bound by their agreement.

What did the agreement do?: NJ (14)
Blain v. Smithson: 2014 N.J. Super. Unpub.

- On this record, defendants provide no basis to defeat their compliance with the boundary line agreement.
- **We need not consider whether the legal boundary lines as altered will be maintained in the event of a transfer of ownership to a non-related third-party.**
- **That problem is deferred to another day.**
- Although **potential future legal entanglements seem likely** at the time either owner attempts to sell the property to an unrelated third party, the current circumstances require plaintiffs and defendants to honor the boundary line agreement.

What did the agreement do?: NJ (15)
Blain v. Smithson: 2014 N.J. Super. Unpub.

- The evidence supports the trial judge's determination that the **family members struck and recorded the boundary line agreement.**
- **Defendants had full notice** of the terms of the boundary line agreement when title was assigned to them.
- We disagree that the nonconformance with applicable zoning laws, which resulted in the Township's statement that the agreement is unenforceable, is determinative.
- By law, the parties agreed to bind themselves and their heirs and assigns by the terms of this neighbors' boundary line agreement.

What did the agreement do?: NJ (15)
Hirschman v. Millburn: 1 N.J. Tax 27; 1980

- For property tax purposes it is well established that what is required by law is an assessment of the value of the property, not the value of the owner's title.

California: What is a "Subdivision"? (1)
Habibi v. Soofer: 2016 Cal. App. Unpub.

- "defined a subdivision as '. . . any real property, improved or unimproved, or portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, …
- …which is divided for the purpose of sale, lease, or financing, whether immediate or future, by any subdivider into five or more parcels . . . .'"

California: SMA vs. Prescriptive Easement (2)
Habibi v. Soofer: 2016 Cal. App. Unpub.

- Moreover, even if the creation of the easements did fall within the ambit of the SMA, there is **nothing in that statutory scheme that prevents a party from acquiring an easement within a subdivision by adverse possession or prescription.**

California: County Regs. vs. Prescription (3)
Habibi v. Soofer: 2016 Cal. App. Unpub.

- The Soofers argue that regardless of the applicability of the SMA, the Habibis had to comply with certain County regulations, particularly Santa Barbara (SB) County Code section 21-15.9,5 to change the easement boundaries depicted on the recorded parcel maps.
- As the Habibis point out, if claims of adverse possession or prescriptive easement necessarily required an administrative boundary change on a parcel map, then no such claim could ever be made without governmental approval. Governmental approval is not an element of either claim, and the Soofers cite no statutory or case authority for such a rule.

California: County Regs. vs. Prescription (4)
Habibi v. Soofer: 2016 Cal. App. Unpub.

- **Nor is there any authority supporting the Soofers' argument that a party claiming adverse possession or prescriptive easement must exhaust administrative remedies before pursuing the claim.**
- To exact such a requirement would entirely defeat the legitimate policies underlying the doctrines of adverse possession and prescription, which "express a preference for use, rather than disuse, of land.

California: Fire Codes vs. Title (5)
Habibi v. Soofer: 2016 Cal. App. Unpub.

- The trial court also determined that title by adverse possession or a prescriptive easement cannot occur if it would compromise public safety. The court took judicial notice under Evidence Code section 452, subdivision (h) "that Southern California and particularly Santa Barbara County are particularly vulnerable to wild fires."
- **Neither the Soofers nor the court cite any authority for the rule that no adverse possession or easement by prescription may occur if there is a possibility that it will create a public safety concern,** such as increasing the spread of wild fires. That is a novel theory unsupported by both the law and the record in this case.

California: Fire Codes vs. Title (6)
Habibi v. Soofer: 2016 Cal. App. Unpub.

- We conclude the trial court erred by determining that the Habibis' claims of adverse possession and prescriptive easement were preempted by the SMA or by public safety concerns.

Marketable Title

Penn: What is Marketable Title? (1)

Conrad J. DeSantis, Marketable Title in Pennsylvania, 9 Vill. L. Rev. 654 (1964).

- The "prudent man" test is seen in many areas of the law, but, from experience, it has proved to be an ill-defined standard.
- A title open to a reasonable doubt is not a marketable title. The court cannot make it such by passing upon an objection depending on a disputed question of fact or a doubtful question of law, in the absence of the party in whom the disputed right was vested.... The cloud on the purchaser's title would remain ....
- The general rule is that a tax title, when lawfully established, is good and marketable…

Penn: Marketable Title & Prescription (2)

Conrad J. DeSantis, Marketable Title in Pennsylvania, 9 Vill. L. Rev. 654 (1964).

- The general rule is that a title clearly established by adverse possession is marketable, and a purchaser will be required to accept such a title unless the contract expressly requires that a title of record be conveyed.
- However, where a person purchased land at a sheriff's sale and he and his successors in title held the land continuously, notoriously, and adversely for seventy-two years, the title was held marketable even though the vendor in execution had no record title.

Penn: Marketable Title & Prescription (3)

Conrad J. DeSantis, Marketable Title in Pennsylvania, 9 Vill. L. Rev. 654 (1964).

- It is undoubtedly true a good title may be acquired by adverse possession, and in exceptional cases, a marketable title. . . .
- The instances in which it may be compelled are rare however, because proof of the fact of open, notorious, continuous, visible and hostile possession, necessarily rests in parol, and "where the title depends on existence of fact which is not a matter of record, and the fact depends for its proof entirely upon oral evidence the case must be made very clear by the vendor to warrant the court in ordering specific performance.

Oklahoma: What is Marketable Title? (1)

Wilson v. Shasta Oil Co., 1935 OK 415

- **"A merchantable title is synonymous with a perfect title or a marketable title."**
- And in Campbell v. Harsh, 31 Okla. 436, 122 P. 127, we said:
- **"A perfect title is one free from litigation, palpable defects and grave doubts and consists of both legal and equitable title fairly deducible of record."**

Oklahoma – What is Marketable Title? (2)

Wilson v. Shasta Oil Co., 1935 OK 415

- "Clear title of record connotes freedom from apparent defects, grave doubts, and litigious uncertainties, and is such title as a reasonably prudent person, with full knowledge, would accept.
- A title dependent for its validity on extraneous evidence, ex parte affidavits, or written guaranties against the results of litigation is not clear title of record, and is not such title as equity will require a purchaser to accept."

California – Good vs. Defective title (1)

Hocking v. Title Ins. & Trust, 37 Cal. 2d 644 (1951)

- "The words **'good title'** import that the owner has the title, legal and equitable, to all the land, …
- …and the words **'defective title'** mean that the party claiming to own has not the whole title, but some other person has title to a part or portion of the land."
- "A common meaning [of the word title] is complete ownership, in the sense of all the rights, privileges, powers and immunities an owner may have with respect to land,"

California – Entitled to Perfect Title? (2)
Hocking v. Title Ins. & Trust, 37 Cal. 2d 644 (1951)

- "A person who has contracted to purchase real estate is entitled to a perfect title; and …
- …if the estate or interest of the vendor is subject to defeasance upon the happening of a contingent event or the nonperformance of a condition, the title tendered is not perfect or 'marketable.'

California – Entitled to Perfect Title? (3)
Hocking v. Title Ins. & Trust, 37 Cal. 2d 644 (1951)

- "Much learning has been expended in giving definitions as to good and marketable titles. The following appears to be one supported by the weight of authority, to wit:
- *'A marketable title, to which the vendee in a contract for the sale of land is entitled, means a title which a reasonable purchaser, well informed as to the facts and their legal bearings, willing and anxious to perform his contract, would, in the exercise of that prudence which business men ordinarily bring to bear on such transactions, be willing and ought to accept.'*

California – Unmarketable, but Marketable (4)
Hocking v. Title Ins. & Trust, 37 Cal. 2d 644 (1951)

- "One can hold perfect title to land that is valueless; …
- …one can have marketable title to land while the land itself is unmarketable." The truth of this proposition would appear elementary.

California – Unmarketable, but Marketable (5)
Hocking v. Title Ins. & Trust, 37 Cal. 2d 644 (1951)

- Although it is unfortunate that plaintiff has been unable to use her lots for the building purposes she contemplated, …
- …it is our view that the facts which she pleads do not affect the marketability of her title to the land, but merely impair the market value of the property.

Maryland – Flaws in Marketable Title (1)
Schlosser v. Creamer, 263 Md. 583 (1971)

- "A title to be marketable need not be flawless."
- "A marketable title is a title free from encumbrances and any reasonable doubt as to its validity.
- No specific rule can be laid down as to what doubts will be sufficient to make a title unmarketable.
- The general rule is that the purchaser is entitled to a deed which will enable him to hold the land in peace and, if he wishes to sell it, to be reasonably certain that no flaw will appear to disturb its market value.

Maryland – Flaws in Marketable Title (2)
Schlosser v. Creamer, 263 Md. 583 (1971)

- However, a title, in order to be marketable, need not be free from every conceivable technical criticism. It is not every possibility of defect or even threat of suit that will be sufficient to make a title unmarketable.
- Objections based on frivolous and captious niceties are not sufficient.
- In other words, a marketable title is one which a reasonable purchaser, who is well informed as to the facts and their legal bearings, and ready and willing to perform his contract, would be willing to accept in the exercise of that prudence which business men ordinarily use in such transactions."

Maryland – Lousy Title Examples (3)
Schlosser v. Creamer, 263 Md. 583 (1971)

- (contract in 1954, title based on patent from the State in 1956 with testimony of an attorney that he had been unable to find any claim of title to the premises, that the property "appears to be lost property");
- (wrong property described in deed and insufficient evidence of adverse possession);

Maryland – Lousy Title Examples (4)
Schlosser v. Creamer, 263 Md. 583 (1971)

- (serious defect in description and testimony of surveyors that improvements were not located on land intended to be conveyed);
- (easement for pipelines across the land to be conveyed and right to use a railroad siding located on it, both of which would interfere with the intended use by the purchaser).

Marketable Title Act??: NC (6)
State v. ALCOA: 853 F.3d 140; 2017

- Finally, North Carolina argues that the MTA cannot be used against North Carolina because it is a sovereign.
- Again, this exception finds no support in the text of the MTA. Nor would such an exception be consistent with the purposes of the Act.
- If the MTA did not apply against North Carolina, the State could simply make a claim to any real property in the State and rely on 146-79 to place the burden of showing ownership on the landowner.
- For most, this would be impossible, especially when records have been destroyed, …

New York: Marketable Title (1)
Condon v. Quigley, 209 A.D. 362: (1924)

- The premises in question, No. 273 Tenth avenue, New York city, located on the southwest corner of West Twenty-sixth street and Tenth avenue, city of New York, were sold on May 3, 1923, at public auction in this partition action, to Paul Englander, for $ 32,000 by the referee herein; and such sale was duly confirmed…
- **the title was rejected by the purchaser, who alleged as his ground therefor that he should not be required to accept the deed without proof as to the title in one Mary Ann Smith and alleged that for such reason the title was unmarketable.**

New York: Marketable Title (2)
Condon v. Quigley, 209 A.D. 362: (1924)

- The question as to the title of Mary Ann Smith arose from an **apparent gap in the record of the deed from her and the immediately preceding deed on the record,** no deed to Mary Ann Smith being found on record.

New York: Marketable Title (3)
Condon v. Quigley, 209 A.D. 362: (1924)

- The title had been examined by the Lawyers Title and Trust Company for the purchaser, and at the suggestion of the purchaser, who is an attorney at law, the plaintiffs, on June 27, 1923, arranged with the Title Guarantee and Trust Company to coinsure the title to the purchaser with the first named company, both companies agreeing to disregard the apparent break in the chain of title between Andrew Garrett and Mary Ann Smith, occurring in 1859.
- After many adjournments the purchaser rejected the title on the ground that at the time the alleged gap in the record made the title unmarketable.

New York: Marketable Title (4)

Condon v. Quigley, 209 A.D. 362: (1924)

- We think that, besides this evident waiver of the right to object to the title, it is **beyond dispute that the title is marketable by reason of adverse possession of sixty-five years.**
- Nothing is on the record to indicate the relationship of Mary Ann Smith, the grantor in the 1859 deed, to the grantee, Andrew Garrett of Tarrytown, in the 1855 deed.
- Nevertheless the chain of title shows the record since 1859 of five full covenant and warranty deeds in the respective years 1862, 1866, 1874, 1876 and 1883.

New York: Marketable Title (5)

Condon v. Quigley, 209 A.D. 362: (1924)

- **Title by adverse possession clearly established, although by parol evidence, is a marketable title**; …
- …and since it appears in this application to compel the completion of a bid to purchase this real estate, that **the plaintiffs have a record title, perfect except as to the alleged gap in the record,** that they and their predecessors have had possession thereunder for a period of sixty-five years,

New York: Marketable Title (6)

Condon v. Quigley, 209 A.D. 362: (1924)

- **Where the facts are sufficiently clear, adverse possession may alone be sufficient to make a title which a purchaser at a judicial sale should be compelled to take.**

Penn: Marketable Title (1)

Moore v. Moore:

2007 PA Super 61; 921 A.2d 1; 2007

- **A determination of consentable line by acquiescence requires a finding**
- 1) that each party has claimed the land on his side of the line as his own and
- 2) that he or she has occupied the land on his side of the line for a continuous period of 21 years.
- Significantly, because the finding of a consentable line depends upon possession rather than ownership, **proof of the passage of sufficient time may be shown by tacking the current claimant's tenancy to that of his predecessor.**

Penn: Marketable Title (2)

Moore v. Moore:

2007 PA Super 61; 921 A.2d 1; 2007

- To do so, however, the claimant must show "sufficient and credible proof of delivery of possession of land not within (but contiguous to) property described by deed of conveyance, which was previously claimed and occupied by the grantor and is taken by the grantee as successor in such interest."
- **"[W] hen a consentable line is established, the land behind such a line becomes the property of each neighbor regardless of what the deed specifies.**
- **In essence, each neighbor gains marketable title to that land behind the line, some of which may not have been theirs under their deeds."**