

Zoning Enforcement Pitfalls and How to Avoid Them

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Ordinance enforcement is an essential function for a municipality to keep its residents and community functioning efficiently. Indeed, the goal of zoning enforcement is to “ensure compliance with [an] ordinance such that the community is protected.” *Borough of Bradford Woods v. Platts*, 79 A.2d 984 (Pa.Cmwlt. 2002). The Pennsylvania Municipalities Planning Code (“MPC”) sets forth a straightforward mechanism to enforce a municipality’s zoning ordinance, but what happens when that enforcement process goes haywire? Small and seemingly innocuous departures from the specific requirements of the enforcement process and the provisions of the MPC can have significant and cascading consequences. Crossing and dotting the proverbial “t’s” and “i’s” at each step of the process will help to ensure the effective administration of a zoning ordinance.

An Effective Ordinance

Pursuant to the MPC, zoning ordinances *may* contain “provisions for the administration and enforcement” of such ordinance. 53 P.S. § 10603(c)(3). Despite the apparent optional nature to include such enforcement provisions in a municipality’s ordinance, inclusion of the same is fundamental to successful enforcement and must comply with the enforcement provisions in the MPC. An effective enforcement provision will put property owners on express notice of their rights and responsibilities relative to zoning ordinance compliance, and the enforcement procedures relative thereto. Effective ordinances clearly set forth policy goals for zoning ordinance compliance, establish expectations for compliance, and lay out the steps the municipality will take to enforce said expectations (i.e., its enforcement procedure and available remedies).

The Zoning Notice of Violation

The first official step in zoning enforcement for a municipality is the issuance of an enforcement notice. Section 616.1 of the MPC sets forth explicitly what must be included in a zoning notice of violation (“ZNOV”). A ZNOV must include: (1) the name of the owner of record and any other person against whom the municipality intends to take action; (2) the location of the property in violation; (3) a description of the specific violation and the requirements in the applicable ordinance sections that have not been met; (4) a specific timeline for compliance; (5) specific appeal entitlements; and (6) notice that failure to either remedy the violation or appeal constitutes a violation with possible sanctions clearly described. 53 P.S. § 10616.1.

Although the ZNOV requirements in the MPC are seemingly straightforward, it is not uncommon for an enforcement officer to inadvertently stray from those requirements and render the enforcement process ineffective. For instance, it is important to perform due diligence in identifying the owner, *or owners*, of record and each of those individuals must be named on the ZNOV. Failing to list *all* record owners on the ZNOV could render the ZNOV invalid or hinder further enforcement avenues. A simple assessment search can help avoid this issue. Once all owners are identified, best practice is to include the names of all owners on the ZNOV and mail a copy via certified mail to the registered address of each individual owner, even if they live at the same address, *and* to post the property with the ZNOV.

Another common ZNOV mishap is the failure to identify the violation with sufficient specificity. The Commonwealth Court has regularly held that failure to include a citation to a *specific* ordinance section alleged to have been violated will render a ZNOV invalid. See, *Twp. of Maiden Creek v. Stutzman*, 642 A.2d 600 (Pa.Cmwlt. 1994) (stating that, “as used in [S]ection 616.1(3),” the term “cite” means a “specific numerical reference to the ordinance section which the township asserts the landowners have violated”). Simply alleging that the “zoning ordinance” or even a chapter thereof has been violated is insufficient.

Keeping in line with specificity requirements, direct references to the timeline for compliance and a property owner's appeal rights are necessary in a valid ZNOV. It is strongly encouraged that ZNOV drafters avoid phrases like "in two weeks" or "by the end of the month," and instead provide a property owner with a (reasonable) date by which to remedy the violation. Similarly, simply informing a property owner of an entitlement to an appeal of a ZNOV does not pass muster. The law requires that a property owner be informed of the right to appeal a ZNOV to the Zoning Hearing Board and the time period to do so. Such a notification should relate directly to the appeal procedure laid out in the municipality's ordinance.

The Magistrate Action

If a (valid) ZNOV is issued and no appeal is timely lodged, the municipality may continue its enforcement efforts before a Magisterial District Judge ("MDJ"). Prior to 1988, municipalities could charge violating property owners with a criminal summary offense and zoning violations could be met with jail time for failure to pay fines. Following a 1988 amendment to the MPC, however, the available remedies for zoning violations were limited to civil penalties of \$500 per day. Thus, if judicial intervention is necessary for a municipality to achieve compliance with its zoning ordinance, the proper avenue for doing so is via the initiation of a civil complaint.

Civil complaints filed with an MDJ should be completed using the state-wide civil complaint form. At first glance, the form requires straightforward information – names and addresses, the amount of the judgment sought, and a citation to the ordinance violated. It is not uncommon for zoning officers to simply fill out the "blanks" on the civil complaint form and submit it; however, engagement with the municipal solicitor is likely worth the effort (and fees) to produce a sound and comprehensive complaint. While unnecessary, a detailed narrative setting forth the enforcement proceedings to date and attaching copies of the subject ordinance sections, ZNOV(s), and other relevant documents not only provides the MDJ with a thorough picture of the circumstances surrounding the violation and enforcement efforts, but also helps to develop a record that may become valuable if further Court involvement becomes necessary.

For instance, in the event the MDJ issues a judgment against the property owner, and that property owner continues to flout the requirements of the zoning ordinance by failing to remedy the underlying violation, a municipality may want to seek injunctive or declaratory relief from a Court of Common Pleas. In those cases, having a well-established record, complete with documentary evidence of the municipality's prior enforcement efforts, will pave a path to more likely success.

Appeal and/or Further Enforcement

If, on the other hand, a property owner *does* timely appeal a ZNOV, the matter will be heard by the municipality's Zoning Hearing Board ("ZHB"). Often, particularly if a municipality's administration is confident that a ZNOV will be upheld by the ZHB, it will send just one individual (likely the zoning officer) to the hearing. Simply put, that is almost always a mistake. ZHB hearings should be taken seriously and prepared for as if they were high-stake court cases because, well, they could ultimately become just that. Many landmark cases that drive how municipalities craft and manage their zoning ordinances originated from challenges heard before ZHBs.

Solicitor involvement in the preparation and litigation of ZHB matters is, again, not necessary but often worth the expense. The MPC requires the municipality to present its evidence first. Best practice is to prepare to present the most comprehensive case possible before the ZHB. This includes the preparation and presentation of demonstrative exhibits, including the ordinance sections at issue, copies of any correspondence with the property owners, the applicable ZNOV, photographs, etc. When considering how to present exhibits, it is also important to contemplate who would best serve as a witness. Most often, the zoning officer is most poised to walk through the pertinent exhibits, but not always. Sometimes a municipal manager or board member has a good grasp on *why* a particular ordinance section was adopted or the property standard it was intended to uphold, other times a neighbor may be able to comment on how the alleged violation is detrimental to the health and welfare of the municipality.

Like with matters that appear before an MDJ, the establishment of a robust record may seem tedious, but the implications of not taking the additional preparatory steps may ultimately lead to a harder row to hoe when compliance with the zoning ordinance is not achieved.

Zoning enforcement can be a straightforward process, but straightforward should not mean lax. Accurate and thorough documentation, including ZNOVs that comply with the requirements of the MPC, and complete records built before either the MDJ or ZHB, is the best way to avoid falling victim to the oft-repeated pitfalls in Pennsylvania zoning enforcement. Moreover, this procedure is specific to zoning ordinances and there is an entirely different procedure

for enforcing other ordinances regulating property maintenance, grading, or stormwater. Our team of well-experienced attorneys regularly assists municipal and private clients in navigating all these processes.

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