

Preface to the Fourth Edition

Humorist and educator Stephen Leacock tells a story about preparing for his first job in the city. Worried that he might not have enough sophistication to survive in a big city, he sought out a book that would give him the information he needed. The recommended book was written in the form of leading questions and answers, such as:

Q: “Did not Caesar invade Britain in 55 B.C.?”

A: “Yes, he did.”

Q: “Was he not later assassinated by Brutus, his friend?”

A: “Yes, he was.”

The entire book was in this form. Leacock tells us that the book was enormously helpful to him in his career. His brother, he says, did not do as well with the book because “he could only remember the answers.”

In *this* book, we try to keep the questions in mind (including ones, some of my readers might say, that are as relevant as those that helped Leacock with his career).

In a more serious vein, this fourth edition covers many new decisions, including three announced by the Supreme Court of Pennsylvania and one by the United States Supreme Court. A couple of cases now pending before the Supreme Court of Pennsylvania are also discussed. Many new topics have been added. In chapter 1, the title and trespass questions posed by the extraction of natural gas through the method known as “fracking” are explored. In chapter 3, a whole new section on boundary disputes has been added to complement a new section on party walls in chapter 7. A discussion of deeds in lieu of foreclosure and the doctrine against clogging of the equity of redemption is added in chapter 4. Recent cases affecting the maintenance obligation of owners in communities governed by homeowners’ associations are discussed in chapter 7, and an analysis of Pennsylvania party wall law is included. In chapter 8, a new section exploring the relationship between restrictive land-use covenants and zoning, as well as other statutory and constitutional limitations affecting such covenants, has been added. Chapter 9, on zoning, has been substantially revised to cover the *Piper Group* decision, which materially affects the zoning relief available to a landowner. New topics in chapter 9 include a

critique of the idea (embraced by the Commonwealth Court of Pennsylvania in the *Robinson Township* case) that the separation of potentially incompatible uses, each in their own district, is constitutionally mandated. In connection with *Robinson Township*, the doctrine of state preemption of local regulations is analyzed. Also, a new section dealing with frivolous zoning appeals has been added (covering the *Takacs* case and others).

This may be attributable to the heavy volume of zoning cases burdening the courts, but it seems to the author that the courts are embracing a “gotcha” approach in their treatment of the procedural issues that come up in zoning litigation—often catching the practitioner by complete surprise. See, for example, the recent decisions of the Commonwealth Court in *Bradley v. Zoning Hearing Board* and *PPM Atlantic Renewable v. Fayette County Zoning Hearing Board*, discussed in chapter 9, section 9-17.6 (in the *PPM Atlantic Renewable* case, a petition for review has been granted and, as of the present writing, the matter is pending before the Supreme Court of Pennsylvania). As argued in this and in prior editions of this book, changes in the MPC enacted in 1988 have added to the procedural morass facing the practitioner. This is particularly true for those representing a landowner who is adversely affected by a change in zoning on a neighboring property, or by a decision of the governing body or zoning board granting a variance or a new use to the owner of such property. It remains unclear, for example, when is the latest time the neighboring landowner can file a challenge to an amendatory ordinance (is it within 30 days of the effective date of the ordinance or is it within 30 days of the issuance of the first permit or other development approval under that ordinance?). See the discussion at section 9-17.4.3. It is unclear when a decision by the governing body or the zoning board is a “decision” for purposes of the time allowed for an appeal (is it when the board or governing body announces its decision, or is it when the written findings and conclusions are mailed to the applicant?). See the discussion at section 9-17.5. The practitioner is often forced to take a “belt and suspenders” approach to these problems by filing several appeals when one should do. This results in cases that should have been treated as one case on the merits becoming several cases, and the courts are not always prepared to allow consolidation on appeal. See the discussion at section 9-11.2.

In chapter 10, a discussion of the procedural issues presented when pursuing a claim in inverse eminent domain has been added. Several important new cases involving other aspects of eminent domain are included. In chapter 11, recent cases involving section 402 waivers of mechanics’ liens are analyzed, and a section is added describing pending legislation affecting the Mechanics’ Lien Law. The effect of the *Commerce Bank/Harrisburg, N.A. v. Kessler* case on construction loans is noted in chapter 11, and the case is discussed at length in chapter 12.

The recent increase in the number of homeowners who are in financial distress has spawned some novel challenges to the validity of home mortgages in bankruptcy. Second-lien home mortgages that are wholly under water have been “stripped off” the home, allowing for the homeowner to reorganize under Chapter 13. Mortgages have been struck down for failure to follow the statutorily prescribed requirements for obtaining acknowledgments. The complicated structure of the securitized secondary mortgage market has also led to a number of assaults on the validity of the home mortgages involved. These new cases and topics are added and discussed in chapter 12.

The United States Supreme Court decision in *RadLAX Gateway Hotel, LLC*, which, in effect, reverses the Third Circuit’s decision in the *Philadelphia Newspapers* case (involving the lender’s right to credit bid under a plan that proposes the sale of the property), is also discussed in chapter 12.

Aside from the recent important Pennsylvania decisions that are covered at some length in this new edition, numerous older Pennsylvania cases, both state and federal, have been added to aid the practitioner in further research.

My thanks are, again, due to Dominic J. Degeneffe, PBI Assistant Publications Editor, for his patient efforts to make sense of my manuscript. Because the changes and additions were more extensive in this edition than in prior ones, just making sure that all the cross references continued to point to the right text and footnotes was a daunting task. As always, he bore this burden cheerfully and with extraordinary professional skill.

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April 2013