CCAP COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA
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NEW OPEN RECORDS LAW

Requests for agency records made after December 31, 2008 will fall under Pennsylvania's new Right-to-Know Law, Act 3 of 2008. The former SB 1 was signed by Governor Rendell on February 14. The House and Senate had passed the bill earlier in the week, following development of a compromise proposal over the holiday recess.

The new act expands the definition of records to include most governmental transactions, and brings the General Assembly and the judiciary under the act. Records are presumed open, unless otherwise kept private under another state or federal law or regulation or court decree. The burden of proof is reversed from prior law, so it falls to an agency to prove a record is confidential, rather than a requester proving it is open.

The Association had been active in development of the proposal, and expressed approval of the final version, indicating that it recognizes the full range of records that local governments keep, it gives more clear guidance than the prior statute, it recognizes governmental capacity and processes, and it strikes an appropriate balance between the public's right to access and the privacy rights of individuals whose records we maintain.

Among other provisions of the act:

- A new independent state-level Office of Open Records is created, which hears first level appeals and which sets guidance and provides training and other resources on the act.
- Thirty specific exceptions are delineated, including exceptions for 911 tapes and transcripts.
- Each agency is to appoint an open-records officer, who handles requests and issues final determinations on records access behalf of the agency.
- The local timeline for response remains five business days.
- Redaction rules remain the same as prior law.
- The fee structure is similar to current law, although some fees are set by the Office of Open Records, and large dataset fees are explicitly permissible.
- Any statute in conflict supersedes this statute.

The Association is developing a comprehensive analysis of the act, including steps counties will need to take for implementation, and is working with the Pennsylvania State Association of Township Supervisors and the Pennsylvania Newspapers Association on a series of training sessions for local governments to be held statewide over the course of the year.

IDEAS FOR YOU

How to hang up!

You should not have to search for an excuse when it is time to wrap up a telephone call and return to work. So why is hanging up so hard to do? Ask one of these questions to make it easier to end a conversation with a long-winded caller:

- "What can I do to help you?"
- "As I understand it, what you need from me is____. Is that right?"
- "What do you feel I can do to resolve this for you?"

Why it works: You take control of the conversation when you identify your own next step. That way, you can suggest a follow-up appointment or action and hang up.

Try this

Offer alternatives to irate customers or employees. When you give them a choice you cede them power, and that can make them feel in control of the situation.

WHAT'S INSIDE

The President's Report, Legislative News, Aggressive Dogs, Solicitor's Report, AAP People, Training Opportunities and more!

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President's Message

Riding Into The Sunset

It can't be true!!! My tenure as president is—over? No way! It just started and I didn't get to visit all the chapters of the AAP. That's the main problem with having one year to try to do so much. However, in looking back, I can say it was an educational event on many fronts. My concentration was in the education and the promotion of professionalism of our members and I believe we did a heck of a job. There have been many new continuing education courses developed and several new ones are on the way. The education auctions have paid off and each chapter has received money to promote education at the local level. The AAP is well on its way to developing a new logo and being identified with a "mission and direction."

In anticipation of our Supreme Court hearing the questioning of the validity of "base-year" assessments, we visited a neighboring state to see first hand how assessments are controlled at the state government level. We discovered the trials and tribulations involved with their transition from assessing at the "county" level to their current state-controlled entity. We also developed a "tax reform subcommittee" to assist CCAP with questions involving processes and procedures in anticipation of changing the current assessment system in the event "change" is truly on the horizon—and we have vowed to become a strong part of the "tax fairness" initiative throughout the state. Not a bad year of accomplishments!

I can't say enough about the CCAP staff and director Doug Hill. Their job is immense and any assistance we can offer to CCAP is one of AAP's goals. The AAP liaison position to CCAP is a vital link to that process. In addition, the Board of Governors members—thank all of you for your dedication to the position. Your contribution in resolving problems and distributing our messages back to your chapters is the key to AAP's success.

I think we have one of the most energetic executive boards I've seen with the AAP. Any one of these members will be excellent presidents of the AAP in the future. Please stay in contact with them on pertinent issues and give them your support.

In conclusion, I encourage all of you to get involved either by running for office or by giving helpful suggestions to your Board of Governors representative on issues helpful to the AAP. It's truly been an honor to serve as your AAP president—It's been a wild ride—in fact, I'm going to ride off on my bike to reach my total 2008 goal of 2000 miles.

Eric

Eric Brown

DEALING WITH AGGRESSIVE DOGS

By Gary Nicholson, CHSP, Senior Loss Control Specialist



Dogs are amazing animals. They love their owners unconditionally. They protect their owners' homes and businesses. They find lost children. They fetch the newspaper. They swim. They lie by the fire. They pull sleds in the snow. They predict seizures and sniff out cancer cells. They lead the blind. They hear for the deaf. They comfort the elderly. They leap from helicopters to rescue the drowning. They roll in dead stuff. They chase the cat. They dig up the garden. They die for us in war time. They sniff out drugs and bombs. They pull wheelchairs. They race agility courses. They steal the TV remote. They warm their owners' feet and their owners' hearts.

Many county employees, as part of their job, enter onto a county resident's property. That resident could have a dog. To prevent being attacked by a dog or having a dog bite them, county employees should follow these recommended dog safety guidelines:

Entering the Property

- When possible, advise the dog owner of your visit and ask them to tie any dogs up.
- When possible, make your entrance in a vehicle. This is the way most dogs see their owners and friends arrive.
- Before walking onto the property, check for signs that a dog may live there, such as bones, a dog kennel, chewed up articles, or dog droppings.
- When entering a property, rattle the gate or make a noise calling or whistling the dog etc.
- If the dog comes, greet him as a long lost friend, and if he responds to you and you are confident, enter the property.
- When a property is entered the gate should be closed, but not latched until it is known where the dog is and whether it is friendly or not.
- If there is barking but it does not get any closer after a reasonable time, we can assume the dog is tied up or behind a back fence.
- Walk in a confident manner. Dogs do not smell fear but they are very good at reading body language (jerky nervous movements etc).
- If a dog approaches you, try and understand his posture. If he is alert but not aggressive, greet him (perhaps turning to the side to present a less imposing figure) let him sniff you but don't stop, just carry on walking perhaps avoiding excessive eye contact. Remember to keep a cautious eye behind you.
- If you come across a sleeping dog, back off and try to waken him at a safe distance and begin the greeting procedure.
- Avoid walking close to the walls of the house as you may surprise a sleeping dog.
- If a dog appears to be chained up, do not assume that the chain is attached, or it may be longer than you think or even break. Remember that dogs are more aggressive when tied up.

. . .continued next page

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- If a dog is hiding or lying on a doorstep give him room to escape. Beware! The fear biter.
- If the owner is present ask them to tie the dog up. Beware! The statement “it’s alright he won’t hurt you”. All dogs will bite given the right circumstances.
- Stand well back when knocking on a door. If there is a dog inside the owner may not be quick enough to prevent the dog from biting you.
- Never assume that because a dog’s tail is wagging he won’t bite, it can mean indecision on the dog’s part, and they seldom hurt yo

Interactions with Dog Owners

A sudden movement by a person or the passing of an object towards its owner when the dog is nearby or in between can be perceived by a dog as a threat to its owner. The dog may misunderstand the context of the interaction and react by biting or lunging at the other person.

If Threatened

Many dog bites are the result of people reacting wrongly when they are approached or threatened by a dog. The initial reaction should be to stop and remain completely still. Eye contact with the dog should be avoided and it should be spoken to gently.

A command such as “sit” or “stay” can be given softly because many dogs will obey these. All threatening gestures such as yelling at the dog, waving one’s arm or rushing at it should be avoided. In some circumstances these actions can scare a dog away, but other dogs may react by attacking. Unless the person has the skills, experience and the equipment to deal with this, any reaction that may accentuate the dog’s aggression is not advisable. Erratic nervous movements or screaming will also cause the dog to advance further. Crouching to reduce one’s body size may relax some dogs, but any movements must be made slowly and deliberately. An article of clothing can be carefully removed and used take the first bite if the dog suddenly lunges.

If the dog relaxes the person should back away slowly. Turning and running are signals for the dog to chase and attack. Most people are bitten moving away from a dog when they turn and run. If the incident occurs outside or near the dog’s home it is important for the person threatened to gradually increase the distance from where the dog lives, as dogs are usually less aggressive on neutral ground.

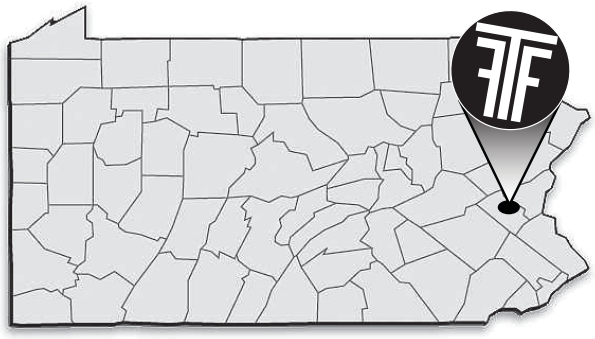
If Attacked

If you believe it is a full-on attack, reach down and pick up something that you can throw at the dog such as a hand full of stones, a shingle or whatever is nearby. If that fails, grab your clip board, briefcase or whatever, and offer it to the dog, keeping it well away from your body. If the dog is truly aggressive, he will grab the object and hold on. Do not let go of the object; if you do he will soon realize that it is not you and will likely attack again.

Normally, after he realizes he is having little or no effect he will stop the attack or at least give you time to plan your next move.

Only strike the dog as a last resort; when a dog is in attack mode pain can incite them more. Never try to kick the dog when he is facing you. It’s reported that a dog can bite ten times before we can respond. If you are knocked to the ground remain motionless in the fetal position, and protect your face by crossing your arms above your head.

In conclusion, despite 12,000 years of living with dogs, they remain largely misunderstood by humans. When a dog, bites we interpret this in human terms. In most cases, the bite is a normal dog behavior. The dog that bites is not necessarily a mean dog or a bad dog - he is just a dog. Remember, most dogs are not aggressive but rather just curious or defending what they perceive as their territory. It is most important to be able to tell if a dog is just playing or is being truly aggressive.



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MEMBER ABILIA

Name: Joseph F. Lewis, Jr.

Position: Chief Assessor

Year in assessment field: Seven

County: Potter

Marital status and family: Married with three grown sons

What irritates me most in the assessment business: People who play politics.

Most people would be surprised to know: I actually like my job.

Biggest challenge as an assessor: Convincing people I am not the enemy

First job*: Heavy Equipment* Operator in the Army

If I couldn't be an assessor, I'd be: Operating heavy equipment

If I won millions in the lottery, I would: Move to Montana or Alaska and take care of a couple true friends

Favorite vacation: Two weeks in Montana

Favorite food and drink: Steak and Lobster, Lemonade

Favorite movie: Shawshank Redemption and The Green Mile

Three people living or dead that I would invite to dinner: Ben Franklin, Sandra Bullock, and John Lennon

The hardest lesson I ever learned as an assessor was the time: I tried to answer every question for a guy who was appealing, and in a hearing he used it against me. Thank God, I had witnesses.

If I could live in the past for one day, I would change: Being too much of a "parent," and not enough of a "dad."

My best friend: My wife, Sandy.

Chapter Notes and Other News

South Central Chapter

Upcoming Meetings:

June 6

September 12

December 5

The South Central Chapter meets quarterly. Our business meetings begin at 9:00AM, with seminars beginning immediately after the meeting (approximately 9:30AM) and are held at the Adams County Agricultural and Natural Resources Center, 670 Old Harrisburg Road, Gettysburg, PA 17325. Please contact Barb Walter at (717) 337-9837, for more information.

Officers for 2008

President: Belinda Little, Adams County

President Elect: Carl Stumpf, Lebanon County

Vice President: Douglas Boswell, Dauphin County

Treasurer: Anne Teal, Perry County

Secretary: Dee Dee McGuire, Lancaster County

Adams County News

Good Luck to Brandon Swezey who moved to Ohio with his wife and daughter. Brandon was Property Evaluator in Adams County. Adams County has issued a RFP for reassessment; data collection is expected to begin this summer.

Cumberland County News

Cumberland County is working on an in-house reassessment, with technical support and modeling from 21st Century Appraisals. The values will be effective for 2010 taxes.

Dauphin County News

Congratulations to Gary Fetterhoff who retired from Dauphin County. Gary was a Commercial-Industrial Appraiser and was employed by the County for 33 years. We hope that Gary enjoys his retirement, which after he recuperates from back surgery, will be spent riding his motorcycle and golfing.

Perry County News

Perry County's reassessment is in the infancy stages, beginning with data collection. The project is being done in-house, utilizing 21st Century Appraisals for modeling. The reassessment will be effective for the 2010 tax year.

STEB News

Congratulations and welcome to Cheryl Leone, who was hired as a field auditor and will be working in Wayne, Pike, Lackawanna, Monroe Carbon, & Schuylkill.

Info Com Ad

Legislative Update

Brinda Carroll Penyak, CCAP Deputy Director

The House and Senate returned from their holiday break in January to a long list of issues that were hanging on from 2007, and were presented with the Governor's budget request in February. While the House and Senate set about addressing the Governor's wish list and their own agenda, CCAP prepared and presented its priority list for 2008.

The pace has been quick, with the association reacting to the budget, which calls for flat funding for county human services programs, a conference committee report designed to establish the parameters of a statewide smoking ban, and a sweeping new law on open records, among other things.

The pace promises to remain very fast, as the House and Senate begin negotiations with the administration to finalize a budget for 2008, and with the Sine' Die session looming in November. While November may seem like a long time away, much remains to be done before then, adding pressure to address important matters. Every bill not signed into law by November 30, 2008, will die, and require re-introduction and a trip through the legislative process starting in 2009. Passing legislation takes time. Only a few session weeks are scheduled for May, and June will be spent working on the numerous budget related proposals that must be passed prior to June 30, 2008, before a new state fiscal year begins. The summer recess will begin in July, and no formal session days are likely until late September. October will leave some time for session, although it may be limited as this is an election year. The entire House and half of the Pennsylvania Senate must stand for re-election this year. Post election and leading up to Sine' Die on November 30, little time remains for consideration and negotiations on what are likely to be major controversial issues. Reform efforts targeting Sine' Die sessions, often referred to as "Lame Duck" sessions are brewing in the background. Some feel that the period post election and leading up to the November 30 deadline produce bad results as those leaving office have little to lose if they cast tough votes.

What remains are some major initiatives. The Governor continues to press for his health care plan "Cover All Pennsylvanian's," which would provide health insurance coverage for all low and middle-income adults. The plan is now connected to the continuation of a program that funds medical malpractice insurance for doctors, hospitals, nursing homes, and other providers. In fact, a program to reduce the cost of liability coverage for these providers has expired because of the continuing disagreement over the health insurance plan and how it would be funded.

The state's crumbling road, bridge, and dam infrastructure are in dire need of attention, and the Governor has proposed a plan to borrow to begin addressing these needs. The tolling of Interstate 80, leasing of the Pennsylvania Turnpike, and the dollars that are anticipated to fund existing transportation needs for state, county, and local roads and bridges may require action in the short term if federal action prevents the plans already in place from being enacted.

A statewide smoking ban is likely to be enacted, but the extent of the ban, and the ability of local governments to enact their own bans remains in question. A major sticking point in the action to finalize a conference committee report relates to whether smoking would be banned in bars and restaurants, and in casinos.

Some items of interest to CCAP in particular include House action on SB 777. This bill would allow a municipality to choose the provisions of the Real Estate Tax Sale Law, or the Municipal Claims and Tax Lien Law under which to collect delinquent tax liens. Currently both laws apply. Late in October 2007, the Supreme Court denied the final petition for appeal in The Pennsylvania Land Title Association v. East Stroudsburg Area School District, which is the impetus for this legislation. In this decision, the court upheld the lower court's ruling that the school district's choice to use the MCTLA to collect delinquent school taxes does not relieve the school districts or their third party collectors of their responsibility to make returns to the Tax Claim Bureau as required under the Real Estate Tax Sale Law (RETSL). Not only will SB 777 reverse the court's ruling in applicable future situations, but many provisions of this bill will also apply retroactively to January 1, 2005. Other municipal government associations have been supporting SB 777 because of concerns about counties collecting 5 percent on liens that are collected by third party collectors under the MCTLA.

One of the supporting arguments in the East Stroudsburg case was that the two laws are designed to operate in conjunction with one another and are not mutually exclusive. CCAP believes that the court's ruling was correct and upholds the legislature's intent. The bill provides a blanket exemption for third party collectors to not comply with the provisions of RETSL, which gives the commissioners authority to extend the period for discharge of tax claim for real estate taxpayers for up to one year.

The third party collectors who comply with RETSL do so by charging fees that are comparable to those that would be charged by the county tax claim bureau, while following procedures that the county tax claim bureau would follow to help delinquent taxpayers meet their obligations, as is prescribed by RETSL.

The House Local Government Committee is working on HB 2018, which would use the Johnstown Flood Tax to provide relief for municipalities where tax-exempt properties are creating a difficult revenue situation. Counties would not be afforded such relief under the bill, and its future is uncertain, given the im-

pact it will have on removing a funding source from the Commonwealth Budget.

The House has also considered HB 1438 and HB 1439, which are designed to prevent a taxing body from appealing a property assessment when there is a countywide reassessment, the property is subdivided and sold, or a physical change has been made to the property such as construction or destruction. Those governing bodies include any borough, town, township, city, or school district. CCAP's Assessment and Taxation Committee will be looking closely at these bills to determine whether the association should take a position.

These are but a few of the hot topics that CCAP is dealing with in Harrisburg. Over the next two month, our activates will be centered on the passage of the budget, and in the fall turn toward other matters as the legislature wraps up its business for the current two year session.

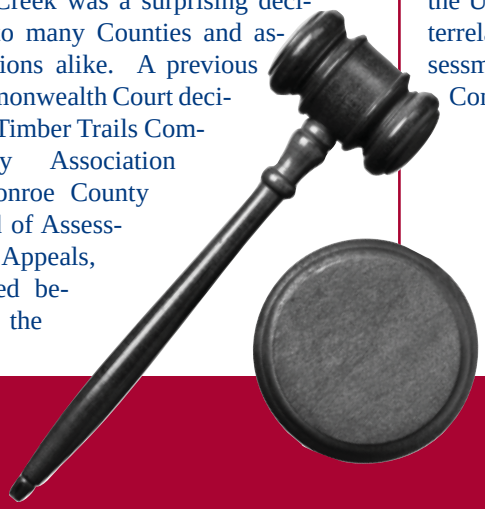


Retroactive Rebate Request Rejected

In a prior column [Summer 2005], I discussed the impact of the Pennsylvania Supreme Court Decision Saw Creek Community Association, Inc. v. County of Pike, 581 Pa. 436, 866 A.2d 260 (2005) on the assessment of common areas or facilities pursuant to Pennsylvania's Uniform Planned Community Act (UPCA), 68 Pa. C.S. §§5101-5414. The UPCA provides that "common facilities" owned by a planned community association are exempt from real estate taxation and assessment. 68 Pa. C.S. §5105(b). Common facilities are areas owned by a homeowner's association that are used and enjoyed by the homeowners.

Common facilities may include roads, ponds, green areas and the community building's recreational facilities. Saw Creek expanded this category by holding that a restaurant and sales office owned by a homeowners' association constituted "common facilities," even though the restaurant and sales office were not for the exclusive use of the lessees, and were open to the public.

Saw Creek was a surprising decision to many Counties and associations alike. A previous Commonwealth Court decision, Timber Trails Community Association v. Monroe County Board of Assessment Appeals, decided before the UPCA was adopted, held that a golf course owned by an Association and held open to the public could be separately taxed and assessed. Saw Creek seems to have changed the playing field considerably.



With this background in mind, we turn to Locust Lake Village, another planned community in Monroe County. On August 20, 2003, the Locust Lake Village Property Owners Association filed an assessment appeal for tax year 2004 on 36 parcels that it owned, maintaining that they were all common facilities that could not be assessed under the UPCA. Included in this appeal was a request for a retroactive refund of the real estate taxes the association had paid on the parcels for prior tax years 2001 to 2003. This request, which was renewed in the Association's appeal to the Court of Common Pleas, was based upon the Tax Refund Law, 72 P.S. §5566b, which provides that, within three years of payment, a taxpayer may seek a refund of taxes paid to which a local taxing authority is not legally entitled.

This case, therefore, raised the question of how the Assessment Laws, the UPCA, and the Tax Refund Law interrelate with respect to taxation and assessment of common areas in Planned Communities. No prior decision of Pennsylvania's appellate courts had ever addressed this issue. Taxpayer relied upon the express language of the Tax Refund Law, and a decision from Adams County, Lake Meade Property Owners Association et al v. Adams County Board of Assessment Appeals, No. 98-S-1126 (October 4, 2000) in which Judge Kuhn, in dicta, would have allowed a retroactive refund if a proper submission had been made under the Tax Refund Act, but actually held that the Act did not apply because the taxpayer never made a formal written and verified claim for the refund. The Taxing Authorities of Monroe County, led by the solicitor for the Assessment Office countered with an argument that the Association had waived its claim for a refund because it failed to file timely assessment appeals for the years in question (2001-2003), and were therefore limited to recovering payments made for tax years 2004 forward. (Had taxpayer won, the School District alone would have had to refund approximately $40,000 in back taxes). Indeed, the Tax Refund Act contains the following additional language:

"(b). The right to a refund afforded by this act may not be resorted t in any case in which the taxpayer involved had or has available under any other statute…a specific remedy by way of review, appeal, refund or otherwise for recovery of monies paid as aforesaid, unless the claim for refund is for the recovery of monies paid under a provision of a statute… subsequently held, by final judgment of a court of competent jurisdiction, to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous." 72 P.S. §5566(b)(b).

Solicitor's

By Mark S. Love
Monroe County Assistant Solicitor



Clinton County Commissioners

Clinton County, Pennsylvania

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The Monroe County Court of Common Pleas agreed with the Taxing Authorities and dismissed the claim for retroactive refund, thus setting the stage for a showdown in the Commonwealth Court, which on January 4, 2008, in a 2-1 panel decision authored by Judge Leavitt, affirmed.

The Commonwealth Court held that "It is the responsibility of the taxpayer to challenge an assessment in the year the assessment is issued in order to avoid the imposition of improper taxes. If no appeal is taken from the assessment of taxes within the time allowed by law it becomes binding and conclusive, and neither the common pleas nor an appellate court can afford any relief… Such a result is salutary because the revenue base of taxing bodies should not be left open indefinitely to retrospective claims."

The Court went on to state: "This principle applies not only where the taxpayer challenges the amount of an assessment but also where the taxpayer claims to be exempt from taxation."

The Court then examined whether the taxpayer could get any relief from the provision of the Tax Refund Act that allows for a refund, even where there is another remedy, when the claim for refund is for the recovery of monies paid under a provision of a statute… subsequently held, by final judgment of a court of competent jurisdiction, to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous." In an important discussion, the court concluded that the Assessment Office's duty to exempt common areas from taxation "arises only after it has been established that the property in question meets the statutory requirements of a "common facility" and that it is the burden of the Association to prove its entitlement to the exemption.

Finally, we have a significant, well researched, and sensible decision in this difficult area of law.

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