

**[J-46-2011] [MO: Eakin, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

CHARLES N. MESSINA, AGNES	:	No. 71 MAP 2010
MESSINA, LEHIGH ASPHALT PAVING	:	
AND CONSTRUCTION CO.,	:	Appeal from the Order of the
	:	Commonwealth Court dated May 26, 2010
Appellants	:	at No. 1919 C.D. 2009 affirming the Order
	:	of the Court of Common Pleas of Carbon
v.	:	County, Civil Division, dated September 8,
	:	2009 at No. 2254 CV 2008
	:	
	:	
EAST PENN TOWNSHIP,	:	
	:	
Appellee	:	
	:	ARGUED: May 10, 2011
	:	
	:	
NANCY BLAHA AND CHRISTOPHER	:	
PEKURNY,	:	
	:	
	:	
Intervenors	:	

CONCURRING OPINION

MADAME JUSTICE TODD

DECIDED: December 17, 2012

I agree with the majority that the void *ab initio* doctrine remains viable despite the amendments to 42 Pa.C.S.A. § 5571.1. I also agree that, because of the deficiencies in the record before us, we cannot assess the substantiality of the last-minute change to the ordinance at issue and, thus, we cannot determine whether the void *ab initio* doctrine is presently implicated. Cf. Appeal of Hawcrest Ass'n, 399 Pa. 84, 160 A.2d 240 (1960) (insubstantial change to proposed zoning ordinance did not trigger new notice requirements). However, as, in my view, that doctrine was the sole basis of

Appellant's challenge to Section 5571.1 — and that challenge fails for want of a sufficient record — I would not further opine on the validity or operation of Section 5571.1, as does the majority. Accordingly, I concur in the result.