

KALASNIK LAW OFFICE

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March 11, 2016

PA Office of the Attorney General
ATTN: ACRE
15th Floor, Strawberry Square
Harrisburg, PA 17120

RECEIVED

SR-72803-2016
MAR 14 2016
Office of Attorney General
Litigation Section

RE: LATIMORE TOWNSHIP ZONING ORDINANCE

Dear Office of the Attorney General :

I represent [REDACTED] owner of [REDACTED] in Latimore Township, Adams County, Pennsylvania. This is a Request for Review of the Latimore Township Zoning Ordinance pursuant to the Agriculture, Communities and Rural Environment Law, also known as, Act 38 of July 6, 2005 (ACRE).

The [REDACTED] is a garden and plant nursery operation that grows and sells shade perennials. The primary items sold are hostas grown from plugs and seeds on the [REDACTED] property. The plugs and seed are obtained from another vendor but for all practical purposes the hostas are raised on the [REDACTED] property from the earliest possible stage.

Latimore Township, through its zoning officer, has informed my client that she may not operate her nursery and gardens unless the hostas are produced solely on her property. The zoning officer has further stated that [REDACTED] may not sell or offer for sale any of her nursery or garden items raised or produced in whole or in part other than on her property (see Latimore Township Zoning Office letter, dated November 24, 2015). In effect, my client's horticulture business is prohibited from its normal operation by the Latimore Township zoning ordinance.

My analysis indicates that the Zoning Officer's interpretation of the applicable portion of the zoning ordinance, Section 402 (A) (5), is hyper-technical and actually adds restrictions that are not apparent from a plain reading of the ordinance. Be that as it may, for purposes of this submission to your office, we ask that you review the Latimore Township Zoning Ordinance to determine whether it violates ACRE. In support of our contention that the zoning ordinance violates ACRE, I offer the following information.

First, patent law prohibits my client from producing hostas from scratch as the Township requires. The only way that my client can sell that particular variety is by the purchasing it from a wholesaler or purchasing it from a grower as a plug with the corresponding patented tag which must accompany that hosta. A plug is the smallest "start" of a hosta that my client can purchase

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from a wholesaler or from a grower. It would be extremely limiting to eliminate these varieties from my client's inventory and would ultimately eliminate the reason why people purchase from the [REDACTED] (to be able to find and purchase a wide variety of hostas). The new varieties are increasingly only available as patented plugs. Therefore, my client would not be able to carry many of the most popular varieties. This would most likely put my client out of business since all of her competitors would be carrying these plants and she would no longer be able to compete with all of the surrounding nurseries (including major garden centers and box stores that have garden centers.

Second, most Hostas are not grown from seed and therefore to be a retailer of Hostas my client cannot grow her inventory from seed. Of the Hostas that are grown from seed, the colors are solid and therefore are not the desirable multicolored hostas that most gardeners seek. Hosta varieties (mainly a solid blue, green or gold) that are grown from seed have a 1 in 5 chance of germinating and developing into a true clone. Even if these hostas were marketable, with only a 20% chance of growing into a hosta it would make the cost too high because of the loss. This method of "growing" hostas is not viable for marketing purposes. These hostas generally are so common that customers would not purchase these hostas from a retailer even if we could grow them. Additionally, these hostas are not properly described as "hostas" and are therefore are not marketable.

The only other way to acquire a hosta is through division which is a highly impractical method due to volume and, again, it is unlawful to divide the hosta if it is patented. Additionally, dividing a hosta does not guarantee that the hosta is pure and true to the name and it creates the possibility of spreading plant diseases. Selling diseased plants would also put my client out of business.

The process to produce a hosta plug is one that includes a sterile lab and a license to propagate. By buying plants and plugs at the wholesale level or from a grower, my client is able to buy a quality hosta that has undergone purity testing- meaning it is free of disease and is true to name. It is a better, healthier plant to the consumer and reduces the chance of spreading disease.

Additionally, plugs need to be grown on before they are suitable for sale which is sometimes a 2 year process. Therefore, it is necessary to purchase both plugs and plants from wholesalers to be able to provide a level of variety for the market, especially since over 95% of my client's sales are specifically hostas. [REDACTED] must be able to have a wide variety of hostas at differing levels of growth to be a viable seller of hostas.

I've also enclosed the following to assist you in your review:

1. The Latimore Township Zoning Ordinance;

Page3
March 11, 2016

2. Latimore Township Zoning Office letter to [REDACTED] (property owners), dated November 24, 2015;
3. Application for a Zoning Permit for Latimore Township, Adams County, Pennsylvania submitted by [REDACTED]

Thank you for your consideration.

Very truly yours,

Joseph A. Kalasnik NR
Joseph A. Kalasnik

JAK/jlr