



Guy P. Beneventano, Esq., LLC
Attorney & Counselor at Law

4349 Linglestown Road • Suite B • Harrisburg, PA 17112

April 25, 2016

Robert A. Willig, Esquire
Senior Deputy Attorney General
Office of Attorney General
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, Pa 15219

Re: Latimore Township, Adams County
ACRE Review Request – [REDACTED]

Dear Mr. Willig:

I have received and reviewed your letter to the Latimore Township Supervisors dated April 6, 2016, wherein you ask them to, (i) “* * * explain why you think [REDACTED] has violated Township ordinances [.] and [(ii)] send me copies of those ordinances and any other documents that you think would help in my review * * *”. This letter constitutes the Township’s detailed explanation as to why it has issued [REDACTED] a conditional zoning permit.

Background

[REDACTED] and her husband, [REDACTED] are the record owners of property (hereafter, Property) approximately 1.363 acres in size, with an address at [REDACTED]. The Property is situate in Latimore Township within the A-C-I (Agricultural-Conservation-I) District. Agriculture is a permitted use within the A-C-I District. (See Latimore Township Zoning Ordinance, hereafter “Zoning Ordinance,” at Section 402.A.1.) The sale of agricultural and horticultural products is also a permitted use in the A-C-I District, so long as such products are “raised or produced on the premises.” (See Zoning Ordinance at Section 402.A.5.)

The principal use of the Property is that of a single-family dwelling; in other words, [REDACTED] and her husband live on the Property. It is their home. This too is a permitted use under Section 402.A.4. of the Zoning Ordinance.

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Municipal Law Zoning Civil Litigation

A property can have more than one permitted use. In this case, the Property has two: (1) it is the Seitzes' single-family dwelling; and (2) it is the location at which [REDACTED] sells horticultural products (i.e., the hosta plants).

The Property is situated on a street in a residential neighborhood. There are no other businesses nearby — only single-family dwellings.

Nonetheless, [REDACTED] is not operating at the Property some small, backyard business. To the contrary, the [REDACTED] boasts of "selling 400 varieties of Hostas."¹ As [REDACTED] explains at her website invitation to the public:

* * * For the 2015 season we currently have approximately 400 varieties of hosta and **an expanded grouping of complimentary shade plants for sale. We also offer decorative items to add interest to your gardens.** * * * Sizes [of hostas] vary from miniature to giant (miniatures stay six inches or less in height and giant hostas can grow to over four feet tall) and colors can be any combination of greens, blues, yellows and white. **Each year we strive to add new varieties of hostas to our nursery and to expand our gardens to provide our customers with the best opportunity to choose from a large quantity of quality perennials. Come for a visit and experience our personalized service and the beauty and serenity of our gardens.**² (Emphasis added.)

(See hardcopy of website information attached hereto at **Exhibit A**.)

There's more. [REDACTED] welcomes groups and "garden clubs." As [REDACTED] proclaims:

[REDACTED] is able to host a variety of groups including garden clubs, hosta societies, master gardeners, women's groups (Bible Study Groups, Social Clubs, friends, secretaries or other small groups within a business), and other groups that have an interest in gardening or planning a fun outing to a beautiful garden and nursery. **We are able to handle both small groups and larger organizations of about forty people** * * * * *³ (Emphasis added.)

(Id.)

¹ [REDACTED]
² Id.

³ Id.

The Complaints

By handwritten letter dated June 14, 2015, [REDACTED] complained to John L. Shambaugh, Latimore Township's Zoning Officer. In pertinent part, she wrote as follows:

When we purchased our house on 4/15/09 we were happy to purchase on a dead end street. We thought it would be great for our children to be away from traffic. Recently there have been semi-tractor and trailers using our road to go to the [REDACTED] *** The [REDACTED] home no longer looks like a home. There are woods and bags of mulch in their driveway. I have seen cars parked in their front yard and they have unsightly white tents up. The tents stay up for months at a time. ***

[REDACTED] and her husband followed-up her handwritten letter by filing a formal complaint with Mr. Shambaugh wherein they summarized much of what she had said in the letter.⁴

On June 15, 2015, Mr. Shambaugh received two more formal complaints from neighbors of the Seitzes: (1) [REDACTED] and (2) [REDACTED] la [REDACTED]. Both couples complained of the increased traffic due to [REDACTED] customers. The [REDACTED] wrote as follows:

Concerned because of the increased traffic on [REDACTED] due to the [REDACTED] e., customer shopping, delivery trucks, outside community attending garden club meetings [REDACTED] website advertises they are able to handle up to FORTY people). The additional traffic and the speed of these vehicles affects the safety of our children, grandchildren, pets and elderly. If [REDACTED] continues to grow, parking at the cul-de-sac will not allow emergency vehicles (ambulances, fire trucks, police) to get to the emergency. *** We have been living at 30 [REDACTED] or 30 years, buying here for the quiet, peaceful, and beauty of this area. [REDACTED] is taking that from us. (Emphasis added.)

On June 18, 2015, Mr. Shambaugh received four more formal complaints from neighbors of the Seitzes: (1) [REDACTED] (2) [REDACTED] 0 [REDACTED]; (3) [REDACTED] and (4) [REDACTED]. The residents at each location complained about the increased traffic and the unsightly appearance of the [REDACTED] property. In a typed attachment to their complaint, the [REDACTED] wrote as follows:

⁴ True and correct copies of all complaints discussed herein, including [REDACTED]'s handwritten letter, are collected at Exhibit B hereto.

We have known that the [REDACTED] had been using their property to grow specialty hostas in their home garden and were calling it Hosta Hideaway. * * * Our concerns have grown over the past couple of years. **There has been increased traffic on our street with cars, dump trucks and tractor trailers.** We have seen the dump trucks actually backing up the street. We have seen cars speeding up and down the street which could cause harm or injury to children and pets. * * * **Their website states they strive each year to expand their gardens. This indicates the potential for even more traffic.** * * * When they host meetings and groups, the cars are parked not only along the street, but in their yard as well. Their website states they can accommodate up to 40 people for these meetings, **where are all these people going to park?** * * * (Emphasis added.)

Mr. Shambaugh also received telephone calls from several of the named complainants at or about the time they filed their complaints. According to at least one of these complainants, [REDACTED] resells at her Property certain plants that are actually purchased from a nearby greenhouse known as [REDACTED]. In response, Mr. Shambaugh contacted Quality Greenhouses on or about July 1, 2015 and confirmed that [REDACTED] is a regular customer.

The named complainants attended the July 13, 2015 public meeting of the Latimore Township Board of Supervisors. A true and correct copy of the approved minutes of that meeting are attached hereto at **Exhibit C**. During the public meeting, the complainants repeated the concerns expressed in their formal complaints, and they demanded that the Supervisors take action against [REDACTED]. In response, the Supervisors promised to take the matter under advisement.

The Township's Response

Following that July 13th public meeting, the Supervisors directed Mr. Shambaugh to inspect the Property in his capacity as Zoning Officer. They also sought the advice of counsel.

By letter dated August 3, 2016, the Supervisors wrote to [REDACTED] with a copy of the letter to each of the other named complainants. A true and correct copy of their August correspondence is attached hereto at **Exhibit D**. In pertinent part, the Supervisors said this:

* * * Mr. Shambaugh recently met with [REDACTED] to inspect the property and review the concerns raised by you and your neighbors. Among other matters, **Mr. Shambaugh has specifically advised [REDACTED] that no business of any kind can be lawfully established on her property without a zoning permit.** He has directed [REDACTED] to make prompt application for a zoning permit if she intends to continue to use her property for commercial purposes. (Emphasis added.)

We will share with you a complete copy of any permit application which [REDACTED] files with the Township. We will also share with you a copy of any zoning permit which the Township issues in response to an application.

At this time, we will not publicly comment on the legality of the use of the [REDACTED] property for horticultural purposes. Generally speaking, within the Township's Agricultural - Conservation I (A-C-I) District, lots may be used for horticulture, including the production of flowers and other ornamental plants. Moreover, **within the A-C-I District, a lot may be used specifically for the sale of horticultural products, so long as such products are raised or produced on the premises.** Any zoning permit application which [REDACTED] files will be reviewed against these requirements. Any decision which the Township makes in response will be based on the Zoning Ordinance and the requirements of state law. (Emphasis added.)

We are mindful of the negative effects which businesses often create when operated in close proximity to residential areas. At this time, we do not believe that the [REDACTED] constitutes a nuisance under the Township's ordinances. **We will, however, continue to review this matter,** and we respectfully ask that you bring to our attention all large gatherings of customers that take place at the [REDACTED] property. (Emphasis added.)

By letter dated August 7, 2015, Mr. Shambaugh wrote to [REDACTED] in his capacity as Township Zoning Officer. A true and correct copy of that correspondence is attached hereto at **Exhibit E.** Therein, he wrote as follows:

*** * *** It appears that a zoning permit has not been issued for a business at your location. **I have conferred with the Township Solicitor concerning this issue. He advised that you must obtain a zoning permit before lawfully using your property for the sale of agricultural and horticultural products.** *** * *** Until you obtain a permit, all sales of such products at your property are unlawful. (Emphasis added.)

My advice to Mr. Shambaugh is based on Sections 1101 and 1108 of the Zoning Ordinance which, in pertinent part, reads as follows: "No * * * building, structure, or land [shall] be established or changed in use without a [zoning] permit therefor [] issued by the Zoning Officer. * * * Failure to obtain a Zoning Permit * * * shall be a violation of this Ordinance and punishable under Section 1111 [enforcement penalties] of this Ordinance." I stand behind the advice I gave to Mr. Shambaugh last August.

██████████ responded to Mr. Shambaugh's August 7th letter by submitting an application for a zoning permit. However, upon review, Mr. Shambaugh deemed the application to be incomplete, and he so advised ██████████ by letter dated August 27, 2015, a true and correct copy of which is attached hereto at **Exhibit F**.

██████████ submitted a revised application dated September 11, 2015, a true and correct copy of which is attached hereto at **Exhibit G**. Upon review, Mr. Shambaugh conditionally approved the application, and he so advised ██████████ by letter dated October 2, 2015, a true and correct copy of which is attached hereto at **Exhibit H**. In pertinent part, Mr. Shambaugh advised ██████████ as follows:

* * * Within Latimore Township's Agricultural-Conservation I (A-C-I) District, I note that lots may be used for horticulture, including specifically the production of flowers and other ornamental plants. (See Zoning Ordinance at Section 402.A.2.) Moreover, within the A-C-I District, a lot may be expressly used for the sale of horticultural products. (See Zoning Ordinance at Section 402.A.5.) However, under the literal terms of the Zoning Ordinance, such products must be "raised or produced on the premises" (*Id.*) (Emphasis added.)

Therefore, based on your recent application and the literal terms of the Zoning Ordinance, I have approved your application to operate a seasonal horticulture business, but **my approval is expressly conditioned upon the selling of horticultural products raised or produced solely on your property. You are not authorized to sell (or offer for sale) horticultural products raised or produced (in whole or in part) elsewhere.** (Emphasis added.)

Additionally, based on the terms of your application, you are authorized to operate a horticulture business only between the last week of April and the first week of October. No business activities related to horticulture may take place at or on your property during other times of the year.

In other words, the Zoning Officer granted a permit to ██████████ to sell hostas so long as the hostas are grown on her Property. She is not, however, authorized to sell hostas grown in whole or in part elsewhere. This condition was placed on her zoning permit because Mr. Shambaugh confirmed the allegation that ██████████ resells plants she purchases at a nearby greenhouse. (See page 4, *supra*.)

Please note: Mr. Shambaugh's letter to ██████████ is an official **determination** made in his capacity as zoning officer. As such, ██████████ could have appealed the conditionally approved permit to the Zoning Hearing Board under MPC §909.1(a)(3), 53 P.S. §10909.1(a)(3), and under Section 906 of the Zoning Ordinance. She, however, filed no such appeal.

In their August 3rd letter to [REDACTED] and the other complainants, the Supervisors promised that they will " * * * will share * * * a complete copy of any permit application which [REDACTED] files with the Township [] * * * [plus] a copy of any zoning permit which the Township issues in response to an application." (See **Exhibit D**.) The Supervisors also promised that they will "continue to review this matter." (*Id.*) The Supervisors have kept their promises.

Mr. Shambaugh wrote to [REDACTED] and the other complainants "as a follow-up to" the Supervisors' August letter. A true and correct copy of the form of Mr. Shambaugh's follow-up letter to [REDACTED] and the others is attached hereto at **Exhibit I**. In pertinent part, Mr. Shambaugh wrote to the complainant as follows:

* * * Upon careful review, I **conditionally approve** her application in my lawful capacity as township Zoning Officer. As a courtesy to you, a copy of the conditionally approved permit is enclosed with this letter. (Emphasis added.)

Within the Township's A-C-1 District, any lot may legally be used for horticulture, including specifically the production of flowers and other ornamental plants. (See Zoning Ordinance at Section 402.A.2.) Moreover, within the A-C-1 District, a lot may be expressly used for the sale of horticultural products. (See Zoning Ordinance at Section 402.A.5.) However, under the literal terms of the Zoning Ordinance, such products must be "raised or produced on the premises" (*Id.*)

* * *

Therefore, based on [REDACTED] application and the literal terms of the Township Zoning Ordinance, I approved her application to operate a seasonal horticultural business, but my approval is expressly conditioned upon the selling of horticultural products raised or produced **solely** on her property. She is not authorized to sell (or offer for sale) horticultural products raised or produced (in whole or in part) elsewhere. (Emphasis added.)

* * *

All of this has been explained to [REDACTED]. As Zoning Officer, I will seek to enforce the terms of the Zoning Ordinance if, in my opinion, [REDACTED] violates the ordinance or the restrictions which the zoning permit places on her commercial use of the property. **Otherwise, she is free to use her property as allowed by law.** (Emphasis added.)

Conclusion

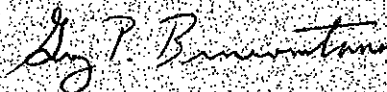
In your letter of April 6th, you close with these comments: "Please be assured that if our review of the ordinance leads us to question the legality of an ordinance or Township action, we will afford the Township an opportunity to provide any information it believes to be pertinent * * *." The Supervisors have directed me to prepare this detailed response so that you have the benefit of all the information the Township deems "pertinent" in this matter.

The Township has not, at any point, wished to interfere with anyone's rights under the ACRE law. To the contrary, all the Supervisors have sought to do is responsibly respond to the real constituent concerns that have been repeatedly voiced regarding [REDACTED]. To this end, Mr. Shambaugh undertook his review in good faith, and his determination was based upon the advice of counsel.

As you undertake your review, please contact me should you require any additional information. In the meantime, please be advised that the Township will provide the named complainants with copies of your recent letter, as well as this response.

Thank you for your attention to this letter.

Sincerely,

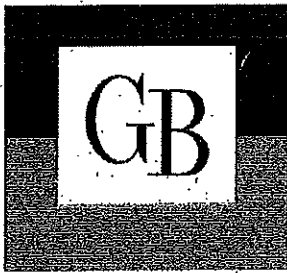


Guy P. Beneventano
Township Solicitor

GPB/db

cc: Latimore Township Board of Supervisors
John L. Shambaugh, P.E., Latimore Township Zoning Officer

P.S. A complete copy of the Latimore Township Zoning Ordinance will be sent to you under a separate cover letter.



Guy P. Beneventano, Esq., LLC
Attorney & Counselor at Law

4349 Linglestown Road • Suite B • Harrisburg, PA 17112

August 23, 2017

Via E-Mail and Regular Mail

Robert A. Willig, Esquire
Senior Deputy Attorney General
Office of the Attorney General
6th Floor – Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

RE: Latimore Township – Adams County
ACRE Request – [REDACTED]

Dear Mr. Willig:

Thank you for your letter dated August 4, 2017.

I have reviewed the letter in detail with the Latimore Township Supervisors. The Supervisors have directed me to inform you that, in your words, “it will take no action against [REDACTED] in light of [your] letter.” Therefore, as I understand your letter, “this matter is closed.”

Shortly, the Township Zoning Officer will send [REDACTED] a new zoning permit, one which removes the condition that she sell only horticultural products raised or produced on her property. A copy of that new zoning permit and the zoning officer’s cover letter will be sent to you upon my receipt of same.

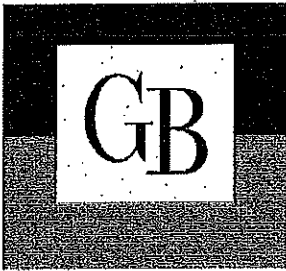
Thank you for your attention to this letter.

Sincerely,


Guy P. Beneventano

GPB/db

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Municipal Law Zoning Civil Litigation



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September 8, 2017

Robert A. Willig, Esquire
Senior Deputy Attorney General
Office of the Attorney General
6th Floor – Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

RE: Latimore Township – Adams County
ACRE Request – [REDACTED]

Dear Mr. Willig:

I write as a follow-up to my correspondence of August 23rd.

Enclosed please find a copy of the August 30th letter to [REDACTED] sent by the Latimore Township Zoning Officer. Consistent with the representation made in my previous letter, the Zoning Officer has sent [REDACTED] a new zoning permit, one which removes the condition that she sell only products raised or produced on her property.

Thank you for your attention to this letter.

Sincerely,


Guy P. Beneventano

GPB/db

Enclosure

LATIMORE TOWNSHIP

Board of Supervisors

559 Old US Route 15
York Springs, PA 17372
717-528-4614; FAX 717-528-8281

Daniel T. Worley,
Chairman
Lawrence E. Dost,
Vice-Chairman
Woody Myers,
Supervisor

OFFICE HOURS:

Monday: 11-4
Tuesday: Closed
Wednesday: 11-4
Thursday: 11-4
Friday: Closed

August 30, 2017

Dear [REDACTED]

Please find enclosed a Zoning Permit (#1735) for your business located at [REDACTED]. The Permit is for a "Seasonal Horticultural Business". The condition on the previously issued Permit (#1541) has been removed.

If you have any questions, please feel free to contact me at the Township office.

Respectfully,

John L. Shambaugh
John L. Shambaugh
Latimore Twp. Zoning Officer