

SUMMARY OF COMPLAINT:

Under Pennsylvania law, dog breeding is considered “animal husbandry” and therefore an agricultural activity. Agricultural uses are permitted by right in the Chanceford Township Agricultural (A) Zone. Therefore ██████████ should not be required to obtain a special exception to engage in agricultural uses. The zoning ordinance provision requiring such a special exception conflicts with ACRE/the Right to Farm Law because the ordinance interferes with normal agricultural operations by prohibiting the kennel from existing in the (A) Zone without complying with unnecessarily onerous and unauthorized requirements.

DOG BREEDING IS CONSIDERED “ANIMAL HUSBANDRY” AND THEREFORE AN AGRICULTURAL USE:

In the case of Lowney v. ZHB of Lower Southampton Twp., 406 A.2d 1160 (Pa.Cmwlt 1979) the Commonwealth Court reversed the trial court and upheld a zoning board decision finding that a dog kennel was permitted as an agricultural use that was similar to other permissible uses in the municipality’s industrial area. The Court stated, “In so holding, we are in accord with our sister state which has held that **the breeding, raising and care of dogs constitute animal husbandry and thus agriculture.**” *Id.*, 406 A.2d at 1162 (Citing *Harris v. Rootstown Township Zoning Board*, 44 Ohio St.2d 144, 338 N.E.2d 763 (1975)) (Emphasis added).

In addition, the Pennsylvania Dog Law is codified in the Agriculture portion of title 3 of the Pennsylvania Statutes, and kennels are overseen and regulated by the Department of Agriculture. 3 P.S. 459-101, *et. seq.* ██████████ kennel was most recently inspected and passed by the Department in December 2020.

Chanceford Township’s zoning ordinance definition of “Agriculture Uses” in §602 includes “animal husbandry:

AGRICULTURAL USES – The use of land for farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and **animal and poultry husbandry** and the necessary accessory uses for packing, treating or storing the produce and equipment and for housing and feeding the animals and housing the equipment. The use of land as a place for the location of a dwelling is not an agricultural use.
(Emphasis added)

While it does not appear that the Right to Farm Act defines “animal husbandry,” the commonly understood definition of the term is consistent with my client’s interpretation and that of the Commonwealth Court:

“Definition of *animal husbandry* : a branch of agriculture concerned with the production and care of domestic animals” Merriam-Webster online dictionary
[<https://www.merriam-webster.com/dictionary/animal%20husbandry>]

The Township’s definition of “Kennel” likewise includes breeding of dogs as domestic animals.

KENNEL – Any building or buildings and/or land used for the sheltering, boarding, breeding or training of dogs, cats, fowl or other small domestic animals at least six (6) months of age which are kept or bred for purposes involving remuneration to the owners, but not to include a riding academy or the keeping of livestock for agricultural purposes. A kennel operation may include accessory uses such as animal grooming.

THE KENNEL:

██████████ breed and sell Labrador retrievers. They currently have 14 dogs used for breeding purposes and produce approximately five to six litters per year. Customer families come to the kennel on an appointment-only basis. ██████████ property is a little over ten acres in size, and the kennel produces over \$10,000 per year in revenue. The kennel meets all applicable requirements for licensure by the Department of Agriculture and was last inspected in December of 2020. The Sites are also inspected and approved by the American Kennel Club.

██████████ have operated the dog breeding kennel on their property since its purchase in August of 2017. ██████████ were unaware that they needed special exception approval to operate a kennel in the (A) Zone until the Township received a noise complaint in October of 2020. The zoning officer informed them at that time that application for a special exception was necessary. The dog that was causing the uncharacteristic noise level was removed to another home off the property and ██████████ are not aware of the Township receiving any other noise complaints since. ██████████ have voluntarily implemented steps to help reduce noise such as the use of an ultrasonic sound device; locked dog runs keeping the animals inside after 9:00pm; fencing and planting to act as screening; and ██████████ intend this spring to erect additional privacy fencing to limit what the dogs can see (and thus bark at).

CHANCEFORD TOWNSHIP ZONING ORDINANCE:

The Chanceford Township Zoning Ordinance is available online at the Township's website: [http://www.chancefordtwp.com/ordinances/Zoning_Ordinances.pdf] a copy of which is also attached. Section 427 of the Zoning Ordinance sets forth the specific criteria for a special exception for a kennel. Kennels are permitted by special exception in the (A) and Rural Residential (RR) Zones in Chanceford Township. Among other things §427(a) and (b) require a kennel to be located at least 1,000 ft from the nearest existing dwelling or area where a dwelling could possibly be located.

The 1,000 ft distance requirement is not mandated by the Department of Agriculture, and indeed this is perhaps the most restrictive kennel requirement in all of York County. My clients researched the specific criteria for operating a kennel in other York county municipalities that have their ordinances available online and created the attached spreadsheet. Of the municipalities researched, Chanceford Township is one of only 4 municipalities that have a 1,000 ft distance requirement from an existing dwelling, and the only one that must be 1,000 ft from a "possible" dwelling location. The vast majority of York County municipalities require either minimum acreage between 2 to 5 acres, and/or a minimum distance from a property line of between 100 – 300 ft. With the exception of the three other municipalities with the 1,000ft dwelling distance requirement, there is no other municipality in York County that ██████████ kennel would not meet all requirements for a special exception.

Furthermore, my clients used Google Earth to calculate the dwelling distances of properties within Chanceford Township's (A) Zone. Of the approximately 2,352 properties in the Township, they believe that less than .005% are capable of meeting the special exception distance criteria to existing dwellings (let alone potential dwelling locations). (See attached document identifying the 21 properties they believe could potentially meet the requirement).

Indeed, as a practical matter by my calculations a property owner would need over 90 acres to ensure that a kennel could not be within 1,000ft of a potential dwelling near its property line. (1,000 ft in each direction of kennel placed in the center of a square shaped property would be 2,000 x 2,000 ft, divided by 43,560 sq.ft. per acre = approximately 91.8 acres).

This is intended merely as an illustration of the extent to which the Chanceford Township is unnecessarily restrictive. As argued above [REDACTED] should not be subject to any such special exception requirements because they are operating a normal agricultural use in the agricultural zone which is permitted by right.

OTHER CONSIDERATIONS/CONFLICT OF INTEREST:

The Chanceford Township solicitor is [REDACTED] of the [REDACTED] in York, Pennsylvania. [REDACTED] is a neighboring property owner located approximately 1,500 ft from the kennel site. [REDACTED] appeared at the zoning hearing board hearing in his personal capacity to object to [REDACTED] special exception application. My clients are not willing to waive the potential conflict of interest of [REDACTED] advising the Township Board of Supervisors in connection with any potential resolution or future litigation.

CONCLUSION:

In short, strict application of the zoning ordinance dwelling distance requirements makes it nearly impossible to operate a kennel in the Chanceford Township (A) Zone. The ordinance is not based upon any state law requirement and as applied to [REDACTED] is unduly restrictive and clearly interferes with a normal agricultural use. This is a violation of ACRE and the Right to Farm Law. 3 Pa.C.S. §311 *et. seq.*; 3 Pa.C.S. §951 *et. seq.*

[REDACTED] hereby respectfully request that the Office of Attorney General intercede on their behalf to contact Chanceford Township to effect a change to the ordinance as it pertains to operation of kennels in the (A) Zone, or alternatively obtain confirmation from the Township that [REDACTED] need not obtain a special exception because they are engaged in a permitted agricultural use.

Thank you for your attention to this matter. If you have any questions about the enclosed or if I can provide you with any additional information please do not hesitate to contact me.

Sincerely,

[REDACTED]
[REDACTED]

[REDACTED]