

LAW OFFICES

May 3, 2022

Office of the Attorney General  
Attention: Mr. Robert A. Willig  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, PA 15222

Dear Mr. Willig;

As solicitor for Lower Chanceford Township, I have been directed to respond to your letter of April 26, 2022 regarding the request made by [REDACTED] to review the decision by the Lower Chanceford Township zoning officer to reject the application of [REDACTED] for a permit to install four (4) 28' X 100' high tunnels and one (1) 30' X 100' high tunnel.

Initially, it must be noted that pursuant to 53 P.S. §10909.1(a)(3), the Zoning Hearing Board has exclusive jurisdiction over the denial of any permit application. Pursuant to 53 P.S. §10914.1(b), all appeals from determinations adverse to the landowner must be filed within thirty (30) days after the notice of determination was issued. The notice of determination having been issued on December 22, 2021, the denial of the permit application is final.

Pursuant to 3 Pa.C.S.A. §314(a), "An owner or operator of a normal agricultural operation may request the Attorney General to review a local ordinance believed to be an unauthorized local ordinance and to consider whether to bring legal action under Section 315(a) (relating to right of action)."

[REDACTED], who filed this request, does not represent that she is the owner or operator of a normal agricultural operation. Therefore she has no standing to file this request. While she purports to be making this request on behalf of [REDACTED] she does not represent that she has a Power of Attorney from [REDACTED] authorizing her to act in a representative capacity nor is there any indication that she is a member of the Bar of the Commonwealth of Pennsylvania and has authority to make this request as attorney for [REDACTED]. Therefore, on that ground alone, the application should be rejected.

Moreover, what the Attorney General is authorized to review is a "local ordinance believed to be an unauthorized local ordinance. . ." [REDACTED] does not identify any local ordinances of the

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township which she believes are unauthorized. Rather, what she asserts is that the township has misinterpreted its ordinance and improperly rejected [REDACTED] permit application. The Act does not authorize the Attorney General to get involved in disputes regarding whether applications have been properly rejected or over the interpretation of ordinance provisions. If the Attorney General was authorized to participate in these types of disputes, the office would be inundated with requests from all the disappointed applicants who believe that their applications were improperly rejected. The authority of the Attorney General is limited to reviewing whether the local ordinance itself is in violation of state law. Disputes regarding the interpretation of ordinance provisions are left for resolution by the judicial system. We enclose a copy of the Lower Chanceford Township Storm Water Management Ordinance amendment enacted on July 3, 2018 which exactly parallels House Bill No. 1486.

Moreover, the township asserts that its zoning officer has correctly interpreted both its ordinance and the underlying state law. The interpretation of both statutory and ordinance provisions is governed by the "Statutory Construction Act", 1 Pa.C.S.A. §1901, et seq. Particular guidelines for interpretation are set for in 1 Pa.C.S.A. §1921 and §1922. Some matters which are to be considered are as set forth in 1921(c) as follows:

- "(1) The occasion and necessity for the statute.
- (2) The circumstances under which it was enacted.
- (3) The mischief to be remedied.
- (4) The object to be attained.
- (5) The former law, if any, including other statutes upon the same or similar subjects.
- (6) The consequences of a particular interpretation.
- (7) The contemporaneous legislative history.
- (8) Legislative and administrative interpretations of such statute."

Section 1922 states that "In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used: (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable. . . ."

A court is not to consider comments or testimony of individual legislators in an effort to determine legislative intent. As stated in an Opinion by the late Judge Blakey of the York County Court of Common Pleas in *Paul L. Smith, Inc. v. Southern York County School District*, 91 York Legal Record 147 (1978) at 149, 150,

"The Defendant objects citing cases which hold that a court should not consider statements of individual legislators when attempting to ascertain legislative intent such as *County of Cumberland v. Boyd*, 113 Pa. 52 (1886) and *Behan Estate*, 399 Pa. 314 (1960). Plaintiff's attempt to distinguish these cases on the theory that they are concerned with resolving ambiguities in statutory language while the question here

is the purpose of the resolution and the nature of the power which the Board exercised, not interpretation of language.

We find no authority for the distinction which they advance ... In *Davis v. Sulcove*, 81 Dauphin 72 (1963), the Court was required to determine whether the legislature had intended to exempt all nursing homes from minimum wage requirements or only non-profit nursing homes. The Court was necessarily concerned with both language and purpose and it rejected statements of individual legislators as a reliable means of resolving either aspect of the related question. Moreover, we note a decision of the *United States Supreme Court in Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1920), frequently referred to in cases on the subject, which holds (at page 474) that the views and motives of individual legislators are not a safe guide and may not be resorted to in ascertaining the meaning and purpose of the law making body."

In *City of Philadelphia v. Depuy*, 431 Pa. 276, 244 A.2d 741 (1968) the Supreme Court stated that "Appellants presented but three witnesses, the first of these, a former state senator, testified as to his own recollection of the events surrounding of the passage of the act concluding that gas companies were taxed discriminatorily. There can be no doubt that this testimony was both irrelevant and improper." *Id.* at 279, 244 A.2d at 743.

Therefore, neither the opinions of [REDACTED] or any other legislator may be resorted to in effort to properly interpret the statutory provisions and the ordinance provisions which mirrors the statutory provisions.

Rather, what should be examined here is the consequence of alternative interpretations and the reasonableness of such alternative interpretations.

H.B. 1486 grants exemption to "high tunnels" from the provisions of the Pennsylvania Storm Water Management Act and ordinances enacted to implement those provisions subject to certain limitations. One of those limitations is that "the high tunnel or its flooring does not result in an impervious area exceeding 25% of all structures located on the owner's total contiguous land area."

The issue is whether the provisions limiting the high tunnel and its flooring to an impervious area not exceeding twenty-five (25%) per cent of the area of all structures located on the owner's total contiguous land area means that the totality of all high tunnels may not exceed that twenty-five (25%) per cent limitation or whether an exemption exists as long as no single high tunnel exceeds that twenty-five (25%) per cent limitation.

To demonstrate the unreasonableness and, in fact, absurdity, of the interpretation proposed by [REDACTED], let's assume that there were on the [REDACTED] property 12,081.56 square feet of existing structures (the amount found by the township, including the barn addition which currently does not have a permit). Twenty-five (25%) per cent of such square footage would be 3,195.39

square feet which would represent the square footage of high tunnels which under the township's interpretation could be permitted on the [REDACTED] property. Under [REDACTED] interpretation, the 3,195.39 would be the limit in size of any one high tunnel that could be permitted. Taking the Stoltzfoos farm of 61.75 acres and assuming 11.75 acres would be precluded for use as a location of high tunnels by reason of setbacks, location of existing structures, etc., there would be available for the location of high tunnels 50 acres or 2,128,000.00 square feet, which would permit the location of seven hundred nine (709) 30' X 100' high tunnels. Recognizing that there would need to be some spacing, one would probably be able to get in at least three hundred fifty (350). Under [REDACTED] interpretation, a twenty-five (25%) per cent provision would not limit in any way the area covered by high tunnels, only limit the size of any one (1) high tunnel.

Recognizing the purpose of the Pennsylvania Storm Water Management Act, 32 P.S. §680.1, et seq. to manage and control storm water runoff in Pennsylvania so as to minimize erosion and increased storm water flows and velocities and recognizing the detailed storm water management ordinance provisions established in most municipalities including Lower Chanceford Township, to secure implementation of the goals of the Pennsylvania Storm Water Management Act, the township is compelled to believe that the purpose of H. B. 1486 was to permit a limited number of high tunnels to be exempt from complying with the normal storm water management requirements set forth in the township's storm water management ordinance, anticipating that the small number of high tunnels permitted would not substantially increase storm water flows with resulting erosion and increased storm water flows and velocity. It is the township's belief that the twenty-five (25%) per cent provision was designed to limit the amount of impervious surface that could be created by high tunnels which result would increase storm water flows. An interpretation that limits only the size of each high tunnel is a rather meaningless limitation. To interpret this provision to mean one could have two (2) 3,000 square foot high tunnels but not one (1) 6,000 square foot high tunnel is rather nonsensical. Two (2) 3,000 square foot high tunnels will create as much impervious surface and as much runoff as one (1) 6,000 square foot high tunnel. Clearly, three hundred fifty (350) 3,000 square foot high tunnels will create much more runoff with consequent environmental damage than one (1) 6,000 square foot high tunnel.

An interpretation that would permit any property to have an unlimited number of high tunnels provided none of them had a square footage in excess of twenty-five (25%) per cent of the square footage of all pre-existing structures on the property represents an interpretation that is absurd and unreasonable, thus inconsistent with the requirements of 1 Pa.C.S.A. §1922(1); *In re: Thompson*, 896 A.2d 659, 669 (Pa. Cmwlth. 2006).

Moreover, as the body charged with administration of the Storm Water Management Act at the local level, the township's interpretation of the Act and its amendments including H.B. 1486 is entitled to great deference. 1 Pa.C.S.A. §1921(8); *In re: Thompson*, 896 A.2d 659 (Pa. Cmwlth. 2006); *Carol Lines, Inc. v. Pennsylvania Public Utility Commission*, 83 Pa. Cmwlth. 393, 477 A.2d 601 (1984).

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[REDACTED] has also complained regarding the township's excluding from the total of the square footage of existing structures the square footage of those structures which were constructed in violation of township ordinances without first having secured a building permit. In the absence of establishment of a vested right in the unpermitted structure by reason of municipal acquiescence over a long period of time [See Appeal of *Crawford*, 110 Pa. Cmwlth. 51, 531 A.2d 865 (1987), *Lockwood v. Zoning Board of Mill Creek Township*, 115 Pa. Cmwlth. 368, 540 A.2d 336 (1988), *Town of Mucy v. Fallowfield Township*, 147 Pa. Cmwlth. 644, 609 A.2d 591 (1992), *Martire v. Zoning Board of Adjustment of City of Pittsburgh*, 74 Pa. Cmwlth. 255, 459 A.2d 1324 (1983)] such unpermitted structure is illegal and may be required to be removed. *Beiler v. Salisbury Township*, 79 Pa. Cmwlth. 213, 468 A.2d 1189 (1983).

In the *Beiler* case, the Court ordered the removal of a calf barn constructed without a building permit. Under such circumstances, clearly a structure constructed illegally with no permits cannot serve as to grant the owner rights that he would not otherwise have. The owner cannot be permitted to benefit from the illegal act of building structure without a permit. The fact that some prior owner constructed the illegal structure rather than the current owner is not relevant to this analysis. *Cameron Apartments, Inc. v. Zoning Board of Adjustment of the City of Philadelphia*, 14 Pa. Cmwlth. 571, 224 A.2d 805 (1974). *Skarvelis v. Zoning Hearing Board of Borough of Dormont*, 679 A.2d 278 (Pa. Cmwlth. (1996).

In conclusion, for all of the above stated reasons, the request made by [REDACTED] should be rejected.

Very truly yours,

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

Dear Mr. Willig;

Very truly yours,

[REDACTED]

[illegible]

**AN ORDINANCE TO AMEND THE LOWER CHANCEFORD TOWNSHIP  
STORMWATER MANAGEMENT ORDINANCE AS ADOPTED ON OCTOBER 7, 2014  
AND AMENDED ON APRIL 7, 2015.**

**BE IT ORDAINED AND ENACTED** by the Board of Supervisors of Lower Chanceford Township, York County, Pennsylvania, as follows:

1. Section 201 of the Lower Chanceford Township Stormwater Management Ordinance is hereby amended to add after the definition of "Forest Management/Timber Operations" and before the definition of "Hydraulic Soil Group (HSG)" the following:

High Tunnel - A structure which meets the following:

- (1) Is used for the production, processing, keeping, storing, sale or shelter of an agricultural commodity as defined in section 2 of the act of December 19, 1974 (P.L. 973, No. 319), known as the Pennsylvania Farmland and Forest Land Assessment Act of 1974, or for the storage of agricultural equipment or supplies.
- (2) Is constructed consistent with all of the following:
  - (i) Has a metal, wood or plastic frame.
  - (ii) When covered, has a plastic, woven textile or other flexible covering.
  - (iii) Has a floor made of soil, crushed stone, matting, pavers or a floating concrete slab.

2. Section 302 L is hereby added to the Lower Chanceford Township Stormwater Management Ordinance as follows:

- L. A "High Tunnel" shall be exempt from all provisions of this ordinance provided
  1. The high tunnel and its flooring do not result in an impervious area exceeding twenty-five (25%) per cent of the area (footprint) of all structures located on the owner's total contiguous land area; and
  2. The high tunnel meets one of the following:
    - a. The high tunnel is located at least one hundred (100) feet from any

perennial stream or watercourse, public road or neighboring property line if it is located on land with a slope greater than seven (7%) per cent.

- b. The high tunnel is located at least thirty-five (35) feet from any perennial stream or watercourse, public road or neighboring property line if located on land with a slope not greater than seven (7%) per cent.
  - c. The high tunnel is supported with a buffer or diversion system that does not directly drain into a stream or other watercourse by managing storm water runoff in a manner consistent with requirements of this act.
- 3. The covering is removed from the high tunnel during December, January and February of each year.
  - 4. The high tunnel does not adversely affect downstream property owners and does not erosion.

In the event the high tunnel shall be in violation of any provisions of this section, it shall be immediately removed and the owner shall be subject to penalties set forth in Section 805 of this ordinance.

**ORDAINED AND ENACTED** by the Board of Supervisors of Lower Chanceford Township, York County, Pennsylvania on the 3<sup>rd</sup> day of July, 2018.

ATTEST:

*James M. Wiley*  
Secretary

LOWER CHANCEFORD TOWNSHIP  
BOARD OF SUPERVISORS

By: *David Glen*  
Chairman