



**TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF
TOWNSHIP SUPERVISORS**

**BEFORE THE
HOUSE LOCAL GOVERNMENT COMMITTEE**

ON

HB 2159

PRESENTED BY

**HOLLY M. FISHEL
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CHANCEFORD TOWNSHIP, YORK COUNTY

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Chairman Freeman and members of the House Local Government Committee.

Good afternoon. My name is Holly Fishel, and I am the director of research and policy development for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to appear before you today on behalf of the 1,455 townships in Pennsylvania represented by the Association.

Townships comprise 95 percent of the Commonwealth's land and are home to more than 5.4 million Pennsylvanians, nearly 42 percent of all state residents. These townships are very diverse, ranging from rural, agricultural communities with fewer than 200 residents, to more urban, populated communities with populations approaching 70,000 residents.

We would like to thank Chairman Saylor for introducing HB 2159 to address and correct a problem that has been created by a recent Pennsylvania Supreme Court ruling concerning airport zoning. In the 2007 case of *Chanceford Aviation Properties, LLP, and Chanceford Aviation, Inc., v. Chanceford Township Board of Supervisors*, the Court held that the township was mandated to enact an airport zoning ordinance in compliance with the state's Airport Zoning Act.

Since 1984, state and federal regulations have required municipalities that have a public airport within their borders to adopt zoning ordinances mitigating the existence of potential hazards on property near or around an airport. Such risks include the location of vegetation such as trees and restricting the heights of structures. The municipality may divide these areas into zones and regulate the use of the land and height of structures within the zoned areas.

When originally enacted, there was uncertainty surrounding the intent of the Airport Zoning Act, including whether many of the provisions were mandatory or optional. However, the *Chanceford* decision has erased any such doubts. Municipalities now have the burden to enact ordinances that protect small, private airfields at the taxpayer's expense. Neighboring municipalities that are deemed to be within the flight path of an airport are also required to enact zoning ordinances under the provisions of the current act.

We believe the Court unreasonably applied the current definition of an "airport" under the statute to cover *any* facility that could conceivably be used to land winged aircraft. In fact, the airport in question in the *Chanceford* case is no more than a grass landing strip. HB 2159 would restore reasonableness to the process by amending the definition of an "airport" by requiring that commercial flight operations be conducted at least two days per week before a municipality would be required to adopt an airport zoning ordinance. In this way, the law would protect those airports that are truly commercial and not simply private airstrips.

We believe that the *Chanceford* case poses an additional unforeseen and problematic consequence that may not be immediately evident when reading the decision or reviewing the statute. When a municipality adopts an airport zoning ordinance, there is the possibility that the ordinance would limit a neighbor's property rights by restricting what, if any, development may occur on the neighbor's property. In the *Chanceford* case, the landing strip in question abuts the neighbor's property and as such the neighbor is prohibited from using the land for anything but a

grass field. Such a situation could constitute a “taking” on the part of the municipality because the property value in the affected land next to the airport will be diminished. This situation creates the possibility that a takings suit will be filed by the neighboring property owners.

While Chanceford Township’s ordinance largely placed the burden of safety and costs onto the airport operator, the court ruling placed a substantial share of that burden on both the township and neighboring property owners. HB 2159 would address this issue by requiring that any airport owner who benefits from the mandated action of the municipality be required to reimburse the municipality for its costs, including court costs and damages from a takings claim. In addition, the ruling created an enforcement burden on municipalities to ensure that the neighboring properties are not creating a hazard for the airport, instead of requiring the airport to cease operation if a hazard were to occur.

While the AZA as currently written does imply that airport zoning may be completed without a comprehensive zoning ordinance, HB 2159 would further strengthen this language and make it very clear that the AZA authorizes spot zoning in this limited situation. Generally, Section 605 of the Pennsylvania Municipalities Planning Code prohibits spot zoning. HB 2159 would reduce the financial burden on municipalities by allowing them to legally comply with the act without the expense of zoning the entire municipality.

In closing, Chanceford Township’s experiences with this issue are not unique. Already, there are reports from throughout the state that other municipalities are facing similar difficulties with private landing strips as a result of the decision. HB 2159 is needed to provide reasonableness to the court decision by exempting small, private airports, allowing municipalities to legally spot zone for airports, and providing for the recovery of legal costs associated with the implementation and enforcement of the AZA.

Thank you for this opportunity to testify today. I will now attempt to answer any questions that you may have.