

Testimony on Behalf of Chanceford Township, York County, PA
Attorney Timothy Bupp, solicitor

I. Introduction.

On behalf of the 4500+ residents of Chanceford Township, we thank the Committee for taking the time to address the issue of HB 2159, the proposed legislative amendment to the Airport Zoning Act (AZA). As a rural municipality which has recently been sued by the private owners of the Baublitz Airport (Airport), Chanceford Township supports the adoption of HB 2159.

Adoption of this amendment will relieve the Township of significant financial and administrative burden placed upon it by the Airport's lawsuit, without having any negative effect upon safety for either airport users or neighboring landowners.

Further, the amendment will allow the Township to avoid impending suits by neighboring landowners whose property rights would be compromised by adoption of airport hazard zoning.

Finally, the adoption of HB 2159 will benefit not only the residents of Chanceford Township, but also the residents of hundreds of other municipalities which have chosen not to adopt burdensome airport zoning ordinances.

II. Adoption of HB 2159 will relieve significant financial and administrative burden placed upon the Township by the requirement of adopting and administering airport hazard zoning.

Baublitz Airport consists of a 100-foot wide parcel of ground in the agricultural zone and does not meet the length, width, or contour requirements for operation of a public airport. The owners of Baublitz Airport sued the Township in 2005, claiming that because the Airport is operated as a "public" airport, the AZA requires the Township to adopt and administer airport zoning controlling the height of structures and natural vegetation on properties near the Airport. The Township resisted the lawsuit because the imposition of airport hazard zoning as proposed in the PennDOT Aviation model ordinance would affect hundreds of properties in the Township, and would prevent some neighboring property owners from making any use of portions of their property; even existing agricultural uses would be curtailed. In 2007 the Pennsylvania Supreme Court handed down a decision stating that the AZA required municipalities within the fly zones of "public" airports to adopt hazard zoning in accord with the AZA.

Chanceford Township now has no choice but to adopt and administer airport hazard zoning, to prevent or control uses that would present potential hazard to the airport's operation. The Township will bear the burden of adopting, overseeing, and enforcing airport zoning. It is interesting to note that PennDOT Aviation and the FAA currently oversee the operation of the Airport and have allowed its operation, despite its deficiencies, at all times in the past. The effect

of the forcing the Township to adopt airport zoning is to shift the financial and operational burden of overseeing airport operation from the PennDOT to the Township – a municipality which lacks the technical expertise and can ill afford the financial burden of such oversight. Under its current operation, the Airport is required to keep its fly zones clear of obstructions or it must cease to operate. Thus, the Airport is not made safer by forcing the Township to adopt an ordinance – the cost of such oversight is merely shifted from the Airport to the Township residents.

III. Adoption of HB 2159 will relieve the Township of impending suits by neighboring landowners whose property rights would be taken away by adoption of airport hazard zoning.

Baublitz Airport does not own sufficient ground even to have a runway suitable for a public airport. PennDOT's model zoning ordinance would therefore require that properties on both sides of the airport give up ALL use of portions of their property to allow the airport to function as a public airport. (A better solution to the present problem would be for PennDOT Aviation to require the Airport to be operated as a private airport, which was its only use in 1979 when the Township adopted zoning.) Imposing such restrictions on neighboring properties is in effect a taking of their property through legislative action – thus the Township has been forced to condemn the neighboring properties for the benefit of the airport, and the Township will be required to pay the cost of such condemnation.

IV. Adoption of HB 2159 will benefit the residents of hundreds of other municipalities which have chosen not to adopt burdensome airport zoning ordinances.

PennDOT Aviation has acknowledged that roughly 80% of municipalities in airport fly zones have not adopted hazard zoning. It has been alleged that these municipalities are derelict in their duty in not adopting such zoning. This is not true. Rather, the municipal officials who serve these municipalities have made the decision that airport zoning should be used only in situations where an airport truly operates as a public airport, and not where expenditure of taxpayer funds will benefit only the private owners of the airport.

Chanceford Township is the first municipality to be sued by its airport, but it will not be the last. Without the amendment proposed by HB 2159, the Supreme Court's recent decision will open the floodgates of litigation for every airport, no matter how small, to declare itself a "public" airport and sue its municipality to force them to adopt airport zoning.

For the above reasons, Chanceford Township supports the adoption of HB 2159, to limit the effect of the AZA to those airports which truly have public function, and to curtail the expenditure of municipal tax funds to situations where its expenditure is truly a benefit to the public.



