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IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION
RT-16.12

To the Matter of: **ALEXANDRA GRACE SHAHMAN**

NOTICE

TO: John Doe

You are hereby notified that a **Petition For Involuntary Termination of Parental Rights to Child** has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania, asking the Court to put an end to all rights you have to your child, **Alexandra Grace Shahman**.

The Court has set a **hearing** for Wednesday, October 3, 2012, at 2:00 p.m. prevailing time, in Courtroom No. 4, for the purpose of determining whether or not your parental rights should be terminated.

You are warned that even if you fail to appear at the scheduled hearing, the hearing will proceed without you, and your rights to your child may be ended by the Court without you being present.

You have a right to be represented in these proceedings by an attorney. You should take this paper and the attached Petition to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Court Administrator
Room 304, Third Floor
Adams County Courthouse
117 Baltimore Street
Gettysburg, PA 17325

Telephone Number: 717-337-9846,
Ext. 265

You are advised that if you were represented by an attorney in any other proceeding involving these children, that attorney will not automatically represent you in this matter. You must take steps promptly to ensure that counsel is hired or appointed if you wish to be represented at this proceeding.

You are advised that if you fail to appear at the hearing without an attorney or you fail to request a continuance

at least seven (7) days in advance of the hearing, the Court will not grant you a continuance for the purpose of obtaining counsel, absent extraordinary circumstances.

9/14, 21 & 28

NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, October 5, 2012 at 8:30 a.m.

WEIGAND—Orphan's Court Action Number OC-103-2012. The First and Final Account of ACNB Bank, Executor of the Estate of Lynn W. Weigand, deceased, late of Hamiltonban Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

9/21 & 28

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on June 11, 2012.

The name of the corporation is **TABLE ROCK GROUP, INC.**

The corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988.

Robert E. Campbell, Esq.
Campbell & White, P.C.
112 Baltimore Street
Gettysburg, PA 17325
Attorney

9/21

PUBLIC NOTICE TO
ERICA MARIE ALICEA

In Re: Adoption of Nevaeh Tnes Alicea-Smallwood, A Minor

A petition has been filed asking the Court to put an end to all rights you have as a parent to your child, Nevaeh Tnes Alicea-Smallwood. An Involuntary Termination of Parental Rights Hearing has been scheduled for October 29, 2012, at 9:30 a.m., in Courtroom No. 12, of the York County Judicial Center, 45 North George Street, York, Pennsylvania, to terminate your parental rights to Nevaeh Tnes Alicea-Smallwood (DOB June 29, 2009), whose Father is Manuel Terray Smallwood and whose Mother is Erica Marie Alicea. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the Court without you being present. You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Jane Madison
Family Court Administration Office
York County Court of Common Pleas
York County Judicial Center
45 North George Street
York, PA 17401
Telephone Number 717-771-9360

Martin Miller, Esq.
Solicitor for York County Offices of
Children, Youth & Families
9/21, 28 & 10/5

LATIMORE TWP. VS. LATIMORE TWP. ZHB ET AL

1. In zoning cases where the trial court does not receive any additional evidence, the scope of review is limited to determining whether the Board committed an error of law or a manifest abuse of discretion.

2. A conclusion that the governing body abused its discretion may be reached only if its findings of fact are not supported by substantial evidence.

3. The Board's interpretation of the zoning ordinance it is charged with enforcing is generally entitled to a great degree of deference.

4. Applying the principal of exclusion to the language of Section 402(A), this Court reaches the same conclusion as the ZHB with regard to its meaning. Specifically, that Section 402(A) clearly allows the continued use of preexisting and unexpanded Concentrated Animal Operations located within A-C 1 districts and prohibits newly created or expanded Concentrated Animal Operations within the same.

5. Because a permitted use cannot be abandoned, this Court is in agreement with the decision by the ZHB that a determination concerning the issue of abandonment of a preexisting nonconforming use is unnecessary and, in fact, irrelevant to the instant matter.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 2010-S-2100, LATIMORE TOWNSHIP, APPELLANT, VS. LATIMORE TOWNSHIP ZONING HEARING BOARD, APPELLEE, AND DALE R. KING AND KAY L. KING, INTERVENORS.

Guy P. Beneventano, Esq., for Latimore Township
Richard P. Mislitsky, Esq., for Latimore Township ZHB
Douglas H. Gent, Esq., for Intervenor
Kuhn, P.J., March 13, 2012

OPINION

Before this Court is a Land Use Appeal filed by Appellants, Latimore Township (Township), on November 12, 2010. The Township's Appeal is from an October 2010 written decision¹ by Appellee, Latimore Township Zoning Hearing Board (ZHB), concerning the use of two contiguous parcels of land² (Property) owned by the Intervenor, Dale R. King and Kay L. King (Owners). In its

¹ The authenticity of the written decision issued by the ZHB is not at issue; however, the decision was variously dated as being from October 5, October 11 and October 12, 2010.

² The Kings, either in an individual capacity or jointly, are the owners of record of two parcels of land totaling approximately 105 acres located at 190 Braggstown Road, York Springs, Pennsylvania. The entirety of the real estate is located within Latimore Township, Adams County, Pennsylvania and is situated in the Agricultural-Conservation I zoning area.

Appeal, the Township alleges that the Zoning Hearing Board abused its discretion and committed an error of law when it concluded that the Owners' use of chicken houses on the Property was a permitted use within the Agricultural-Conservation I Zoning District³ in which it was located.

The relevant procedural history and facts are as follows. On or about July 29, 2010, the Latimore Township Zoning Officer issued two revocation notices to the Owners informing them that they had abandoned a preexisting, nonconforming use of five (5) chicken houses located on the Property. On August 10 and 25, 2010, the Owners filed timely appeals from the respective notices. The appeals were consolidated and a hearing was held before the ZHB on September 23, 2010. In October 2010, the ZHB issued its written decision in which it concluded that the use of the five chicken houses on the Property constituted a permitted use pursuant to Section 402 of the 2008 Latimore Township Zoning Ordinance⁴, and therefore, it did not need to make findings of fact concerning the issue of abandonment of a preexisting nonconforming use. On November 12, 2010, the Township filed the instant Appeal from the ZHB's decision. On November 30, 2010 the Owners formally intervened in the Appeal.

The parties have stipulated to the following facts. The Owners constructed and began using the five chicken houses on the Property at a time prior to the Township having a Zoning Ordinance, and they have been continuously using the Property for such purposes from the date of acquisition in the 1960s to the present. On March 5, 1987, the Township enacted its first Zoning Ordinance⁵ which deemed the entirety of the Property to be within an area zoned as an A-C I district.⁶ The zoning classification of the area in which the Property is located has remained unchanged since that initial Ordinance. The Owners' chicken houses/operation fits the definition of a "Concentrated Animal Operation" under the 2008 Zoning Ordinance.⁷

³ Hereinafter referred to as the "A-C I district."

⁴ Hereinafter referred to as "2008 Zoning Ordinance."

⁵ Hereinafter referred to as "1987 Zoning Ordinance."

⁶ That district permitted agriculture, including the raising and keeping of livestock such as poultry. *1987 Latimore Township Zoning Ordinance* at Section 402(A).

⁷ A "Concentrated Animal Operation" is defined in Section 202 of the 2008 Zoning Ordinance as "an agricultural use involving the commercial keeping and handling of livestock of two (2) Animal Equivalent Units (AEUs) per acre."

In zoning cases such as the instant matter where the trial court does not receive any additional evidence, the scope of review is limited to determining whether the Board committed an error of law or a manifest abuse of discretion. *In re Petition of Dolington Land Group*, 839 A.2d 1021, 1026 (Pa. 2003). The Court does not substitute its own interpretation of the evidence for that of the Board. *Pietropaolo v. Zoning Hearing Bd. of Lower Merion Twp.*, 979 A.2d 969, 976 (Pa. Commw. Ct. 2009). “A conclusion that the governing body abused its discretion may be reached only if its findings of fact are not supported by substantial evidence.” *Sutliff Enterprises, Inc. v. Silver Spring Twp. Zoning Hearing Bd.*, 933 A.2d 1079, 1081 n.1 (Pa. Commw. Ct. 2007). Evidence is substantial when a reasonable mind could accept it as adequate to support a conclusion. *Cardamone v. Whitpain Twp. Zoning Hearing Bd.*, 771 A.2d 103, 104 (Pa. Commw. Ct. 2001).

Moreover, the Board’s interpretation of the zoning ordinance it is charged with enforcing is generally entitled to a great degree of deference. *Ruley v. W. Nantemean Twp. Zoning Hearing Bd.*, 948 A.2d 265, 268 (Pa. Commw. Ct. 2008). The basis for this deference is the specific knowledge and expertise the Board possesses to interpret said zoning ordinances. *Willits Woods Assoc. v. Zoning Bd. of Adjustment City of Philadelphia*, 587 A.2d 827, 829 (Pa. Commw. Ct. 1991).

In this case, the decision at issue is the ZHB’s interpretation of Section 402(A) of the 2008 Zoning Ordinance. Section 402(A) states, in relevant part, that the land contained within this district is permitted to be used for “[a]griculture including cultivating the soil, producing crops and forage, dairying, raising and keeping livestock, excluding the development of new or expansion of existing Concentrated Animal Operations.” 2008 Latimore Township Zoning Ordinance at Section 402(A) (emphasis added)⁸.

In its October 2010 decision, the ZHB interpreted the language of Section 402(A) as permitting the use of preexisting and unexpanded

⁸ Section 202 of the 2008 Zoning Ordinance defines “livestock” as domesticated animals, including poultry. Chickens are poultry, thus, raising chickens is permitted in the A-C I District. Each of the five chicken houses at issue can accommodate thousands of chickens. The issue revolves around whether a Concentrated Animal Operation which existed in the district before zoning is considered a nonconforming use or a permitted use which cannot be expanded.

Concentrated Animal Operations within A-C I districts while specifically prohibiting any newly created or expanded Concentrated Animal Operations. The ZHB found that the Owners' construction and use of the chicken houses predated the Township's 1987 Zoning Ordinance and that the scope of the facilities and use had not expanded since their inception. Accordingly, the ZHB determined that the Owners' use of the chicken houses was not a newly created or expanded Concentrated Animal Operation and therefore constituted a permitted use under the Zoning Ordinance. Having found the Owners' use to be permitted, and in light of the fact that a permitted use cannot be abandoned, the ZHB concluded that it did not need to make findings of fact concerning whether the abandonment of a pre-existing nonconforming use had taken place.

In its Appeal, the Township contends that the ZHB's decision constitutes an abuse of discretion and error of law because the Owners' chicken houses constitute a nonconforming use that had been discontinued and required the granting of a special exception to be resumed. In support of its contention, the Township asserts that the Owners' use is a nonconforming use because it was always referred to as such in previous interactions with the Township concerning the Property. The Township further contends that the Owners discontinued the use of the chicken houses as early as 2009 and thus relinquished any claim to use of the chicken houses as a preexisting nonconforming use at that point.

As previously discussed, this Court's scope of review in this case is limited to determining whether the decision of the ZHB constitutes an abuse of discretion or error of law. See, e.g., *In re Petition of Dolington Land Group*, 839 A.2d 1021, 1026 (Pa. 2003). This Court has determined that the ZHB was correct in finding that the language of Section 402(A) is clear and unambiguous as it sets forth the basic uses permitted in A-C I districts within the Township. Applying the principal of exclusion to the language of Section 402(A), this Court reaches the same conclusion as the ZHB with regard to its meaning. Specifically, that Section 402(A) clearly allows the continued use of preexisting and unexpanded Concentrated Animal Operations located within A-C I districts and prohibits newly created or expanded Concentrated Animal Operations within the same.

Prior to the enactment of zoning in the Township, the Owners were engaged in farming. When the 1987 Zoning Ordinance was enacted,

the raising of livestock, including poultry, was permitted in the A-C I district where the Owners' operation was located. Thus, the Owners were not engaged in a nonconforming use, but rather in a permitted use. When the 2008 Zoning Ordinance was enacted, the Township amended Section 402, not to exclude the raising of livestock, but rather to clarify that if the scope of the use met the definition of a Concentrated Animal Operation, then that usage could not be created or expanded.⁹ In the matter sub judice, there is no evidence that the Owners are seeking to create a new livestock raising operation that would qualify as a Concentrated Animal Operation, nor are they seeking to expand such a use. In fact, the parties stipulate that such is not the case. Instead, the evidence suggests that the Owners simply want to continue raising chickens in the same location and manner as they have for the past 40 years.

Accordingly, this Court has determined that the chicken houses on the Property do not constitute a newly developed Concentrated Animal Operation or an expansion of an existing one and are, therefore, a permitted use within an A-C I district. Section 513(H) of the 2008 Zoning Ordinance provides for the abandonment of a preexisting nonconforming use; however, there is no provision for the abandonment of a permitted use and such a concept would be contrary to reason and logic. Because a permitted use cannot be abandoned, this Court is in agreement with the decision by the ZHB that a determination concerning the issue of abandonment of a preexisting nonconforming use is unnecessary and, in fact, irrelevant to the instant matter.

Thus, for the aforementioned reasons, the Appeal by Latimore Township presently before this Court is DENIED.

ORDER

AND NOW, this 13th day of March 2012, upon consideration of the briefs, responses thereto, and other materials submitted to this Court by the parties in their respective capacities in this matter, it is HEREBY ORDERED that the Appeal by Latimore Township presently before this Court is DENIED.

⁹ Instead, the Ordinance states that "newly created or expanded Concentrated Animal Operations are now permitted by special exception in the A-C II District." 2008 Latimore Township Zoning Ordinance Section 412(B).

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF THOMAS A. BROWN, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Co-Executors: Scott B. Brown, 24612 Tandem Drive, Damascus, MD 20873; Tab A. Brown, 2599 Fred Everett Road, Kinston, NC 28504

Attorney: Bernard A. Yannetti Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FRANCIS C. KRESS, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Joyce A. Kress, 1395 Littlestown Road, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF FRANCES W. ROELKE, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Personal Representative: Mary Lou Coleman Philbin, P.O. Box 14, Dickerson, MD 20842

ESTATE OF ALMA L. SHAFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Frank Lynn Shaffer, 3309 Caroline Drive, East Petersburg, PA 17520

Attorney: Alex E. Snyder, Esq., Barley Snyder LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF MERLE E. WOLF, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Holly R. Albrecht, 270 South Walnut Street, Dallastown, PA 17313

Attorney: John C. Zepp III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

SECOND PUBLICATION**ESTATE OF JOSEPH F. BALEK, DEC'D**

Late of Reading Township, Adams County, Pennsylvania

Co-Executors: Robert L. Balek and Barbara L. Smith, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF MARGARET W. DAGUE a/k/a MARGARET WELLER DAGUE, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Beatrice D. Renner, 48 Obsidian Drive, Chambersburg, PA 17202

Attorney: Henry O. Heiser III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARGARET DOLORES HENKE, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: Robert J. Henke Jr., c/o Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 East Middle Street, Gettysburg, PA 17325

Attorney: Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 East Middle Street, Gettysburg, PA 17325

ESTATE OF ROBERT M. MUSSELMAN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: John P. Musselman, 15 White Oak Trail, Gettysburg, PA 17325

ESTATE OF ELIZABETH M. PULVER, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executors: Dian J. Cramer and Donald A. Pulver Jr., c/o James K. Noel IV, Esq., McNeese Wallace & Nurick LLC, 570 Lausch Lane, Suite 200, Lancaster, PA 17601

Attorney: James K. Noel IV, Esq., McNeese Wallace & Nurick LLC, 570 Lausch Lane, Suite 200, Lancaster, PA 17601

THIRD PUBLICATION**ESTATE OF JAMES A. FRAZIER, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Executor: Roger Frazier, 1006 Old Carlisle Road, Aspers, PA 17304

ESTATE OF DANIEL L. HEAGEY, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Rodney E. Heagey, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF JANE C. MARTIN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: ACNB Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOHN G. MCCARTHY, DEC'D

Late of Lecanto, Citrus County, Florida
Joseph C. McCarthy, 804 Pineaire Street, Inverness, FL 34452

Attorney: Timothy E. Kane, Esq., 474 West Market Street, York, PA 17401

ESTATE OF DAVID SCOTT PAYNTER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administratrix: Renee Vargo, 51 Chambersburg Street, Apartment 4, Gettysburg, PA 17325

Attorney: Joseph C. Korsak, Esq., Law Office of Joseph C. Korsak, 33 North Queen Street, York, PA 17403

