



PA House of Representatives
Republican Policy Committee

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Rep. Joshua D. Kail
Chairman

PA House Republican Policy Committee Hearing
“Removing Obstacles to Opportunity: Building Pennsylvania”

February 28, 2024, at 10 a.m.

Tamaqua Community Arts Center
125 Pine Street
Tamaqua, PA 18252

10:00 a.m.	Welcome and Pledge of Allegiance
10:10 a.m.	Hon. Mike Tobash <i>Former State Representative and Principal, Tobash Financial Solutions</i>
10:15 a.m.	Nick Boyle <i>Developer</i>
10:20 a.m.	Dave Frew <i>President, Gooseberry Realty</i>
10:25 a.m.	James Moore <i>Manager & Principal Engineer, Lehigh Engineering</i>
10:30 a.m.	Questions for the Testifiers
11:00 a.m.	Closing Comments

Testimony
House Policy Committee 2/28/24
Former Rep. Mike Tobash

Legislative Intent vs Interpretation

Good morning to our distinguished local Legislative Delegation, Policy Chair Kail, Members of the committee, House staff and members of our community. My name is Michael Tobash and I'm here to offer my perspective as a former member of the general assembly, businessowner, property owner, community volunteer, immediate past president of the Pottsville Area Development Corporation, engaged resident, etc. etc. etc. The reason I wanted to testify is that I miss you guys and gals, I have current project that is part of Pottsville's revitalization initiative and want to communicate my belief that **we have reached a point in time where safety requirements have become roadblocks to allowing buildings, neighborhoods and towns from actually becoming safer! Safety regulations are causing some buildings to remain unsafe.** Where the intent of law lawmakers gets lost and changed between the drafters of the bill, the amendment process the people that promulgate the regulation and those who interpret those codes like architects, engineers, code enforcement and resolution or arbitration committees. As a result of the disconnect between intent and interpretation, uniform **construction codes are not applied uniformly** and when Legislative intent and interpretation gets far apart the regulations are points of contention rather than common sense guidelines causing the architectural and engineering elements of a project to be so excessive and costly that many legitimate revitalization projects in struggling communities are dead on arrival.

The reason it happens is simple but overcoming it is not easy. Here is where I think some of breakdown occurs:

Lack of Understanding

Like the Telephone Game ... by the time 10 people try to repeat even a short phrase the phrase and the meaning of the phrase become totally different. With 203 members discussing many issues, even a straightforward concept becomes stretched and contorted.

The Process of Making Law

It's simple to make a law. Take any statute and find the paragraph and line that contains the word MAY and strike it out and change it to the word SHALL. Now you have a bill, and if it gets through committee 1st, second and third considerations with a full vote of the house, with potential amendments and then the same process in the Senate the rules have changed. You, as law makers have the distinct privilege to change the rules, but with that honor comes a huge responsibility. Contemplating the side effects and unintended consequences of requiring legitimate project owners and developers to jump through more and more hoops that keep getting smaller and smaller and add burdens that don't always increase safety.

Over Regulation

In September 2023 the Commonwealth Foundation conducted a study "Cutting Red Tape in Pennsylvania" **the study found that the 166,219 statutes that exist in Pa is nearly 30,000 more than the average state.**

I used to say the general assembly has a problem with math, they can't subtract! Generally speaking, the body doesn't get rid of rules to fix something that is not working they add more rules and as a result those interpreting the statute, if they want to error on the side of caution, go to the most restrictive section and cite **that** section as the reason to add layers of often unneeded construction elements.

Present the Sprinkler

We subtracted when we ran Representative Garth Everetts bill to **Not Adopt** the UCC code requirement in 2010 where every new home built in Pa would have needed to have sprinklers.

On a current project I have had good communications and support of the community where I own a couple of properties. Here is an example of why more projects never get off the ground.

Cost

Retail (2 units) and Residential (3 units) mixed use building purchase \$130,000

Costs associated with the purchase \$10,000 = **\$140,000**

Annual costs associated with operations (50% of gross revenue) x 10 years = \$350,000 = **\$490,000**

Engineering, permitting and renovation costs \$1,100,000 = **\$1,590,000**

Profit

Valuation with appreciation from improved market conditions and renovations \$390,000 = **\$1,200,000**

Annual Rental Income \$75,000 x 10 years = \$750,000 = **\$450,000**

Grant assistance and support (\$80,000, \$90,000, \$20,000, \$10,000) \$200,000 = **(\$250,000)**

interest at 7% for 10 years = \$373,636 = **(\$623,636)**

Costs associated with renovation and safety requirements have gotten so out of hand, projects are unprofitable without subsidies and tax breaks. Even with substantial support a project like this results in properties remaining partially vacant or dilapidated and unsafe. You call it blight and the problems associated with blight are probably coming to a hearing near you very soon.

We're choking ourselves! If you strive for economic growth and on the same legislative day vote for additional requirements to make our streams cleaner, protect endangered species, vote for more road signage to keep our roads safer and added requirements for construction and renovation you're really not accomplishing an atmosphere for economic growth.

You are not striving to encourage and allow small private sector developers to attract residents with disposable income to improve the second and third floors of buildings in your communities.

And that is exactly what Pennsylvania needs to reverse the trend of out migration. We need thriving small city downtowns. They do exist, but they exist only where cooperation and working together are a recipe for navigating the red tape that you all can help to alleviate. They exist by navigating all of the requirement to find the solutions that get back to the intended result you are looking for; economic revitalization, prosperity and safety.

Thank You

Good morning. I would like to take the next 5 minutes of your time on how the investment process works in small towns in the Commonwealth. One of our businesses deals in rental properties for both commercial and residential use. Tamaqua has seen an explosion in population in the past two years. The school district has seen a 10% rise in student population, this has spiked demand for housing. What investors in small towns like Tamaqua need is help from our legislators in common sense zoning and common-sense code enforcement and assisting reopening the unused 2nd and 3rd floor spaces.

Local municipalities adopt generic zoning and planning plans that are made for open canvas communities and not communities that were built pre automobile. An easy example of this is our property on 46 Mauch Chunk St it is with in eye site of where we are today. So you can easily get a visual on your way out. That building has a 2250 square footprint. If that was a blank lot today with we would only be allowed to build a 900 Square footprint because of the generic setbacks contained in the Zoning Ordinances. Now that being said in my experience most Code Enforcement Officers will say: "File for the variance and you will get it". Well if that's the case how about I just pay an extra \$500.00 at closing and we don't delay our development by 90 days. Because as soon as you get into the variance hearing its going to cost you between \$400 and \$500 to file, plus attorney fees, engineering, surveying. AND 90 days. Because barely any new construction could be completed inside the borough limits due to the use of generic zoning that we use across the commonwealth this has basically become a Tax. Another form of Revenue Generation. My Recommendation would be to create different zoning for different styles of communities. Urban, Suburban, Per 1900s communities, new developments, etc.

Senator Argall got a one-million-dollar grant for Pottsville and Tamaqua to renovate 2nd floor apartments into viable units. This was a great step in the right direction to relieve the house demand; however, the execution is flawed.

I want to apologize because I am going to get a little into the weeds of investing in small older communities like Tamaqua. So, in order to make a return on investment these units must have a cost between 50k – 70k per unit. For example, if you have a 5-unit building, in order to make a return, your purchase price and renovation cost must be 250k and 350k for the whole project. The grants flaw is that you can get up to 40k per unit on a one-to-one basis, so you need to put in 40k of your own money. That puts you at 80k per unit before the purchase cost of the property itself. Homes sell in this community for that much. Another flaw is the required use of prevailing wage. Prevailing wage restricts the distance an investor's dollar will go. Programs like this would work fine in Philadelphia where rents are 3x of what they are here. Because of the prevailing wage aspect, you get in danger of exceeding the 50.1% renovation cost, which then requires you to bring the entire building up to today's codes. You can start to see how quickly this can spiral out of control. Now your 42" wide 180-year-old between staircase needs to be ripped out and 48" one needs to be installed which will cost more than the purchase price of the building. Besides once all the dust settles from construction and purchasing the property it will not appraise for what is into it. Leaving lenders to demand more of a downpayment to finance these projects. If you don't believe me, ask yourself why the money has not been used in two years. Our company has completed or is working on over 16 units since the money has been available and we cannot get the numbers to work.

Recommendations:

1. Create different zoning for different styles of communities. Urban, Suburban, Pre 1900s communities, new developments, etc.

2. Common sense code enforcement for renovations on older downtown structures. Remove the money generation aspect of investing in small communities.
3. Removal of prevailing wage requirements on grants in smaller communities. The government shouldn't be in the business of helping unions be competitive. The market will set compensation rates.

- Introduction to regulatory landscape on private coal lands
- Minersville vs. Tamaqua example
 - Two very similar communities and landscapes with very different obstacles due to permit status
 - Minersville has been permitted for decades, very few hurdles exist
 - Lack of permits in Tamaqua creates significant obstacles
- Burdens of government agency reviews on properties large enough for mine operations
 - Environmental review is an ever-increasing burden
 - Agencies such as PNDI, PHMC, PFB, EPA place heavy hand on most sites
 - Any property large enough for even a small mine operation will always generate “hits” from these agencies, through database cross reference, indicating **potential** for an environmental impact to exist
 - It is responsibility of applicant to clear or mitigate these impacts. Should this burden rest on the applicant or the agency?
- Extensive application process
 - 95 documents over 6 separate submissions, thousands of pieces of information
 - Challenges the permit preparer faces
 - Attempts to streamline process only seem to add to it
- The ever-changing landscape of paperwork
 - The constant changing of forms, etc. require the manual input of information even when nothing has changed from previous submittal
 - The switch to computer-based systems remain in infancy and still require redundant inputs
- Water monitoring
 - Mine water needs to be constantly monitored and reported on, however water quality never changes
 - Water monitoring costs hundreds of thousands of dollars per year, however the benefit is very unclear
- Entire SMP process takes around 2 years and can cost an operator hundreds of thousands of dollars. What will the price of anthracite be two years from now?
- Bonding inflation factor
 - When bond structure of an existing permit is adjusted, a small change to the mine permit can easily create a bond liability increase in excess of \$1 million