
Paul H Silvis Testimony on PA's Regulatory Business Climate

Public Hearing: Pennsylvania's Business Regulatory Climate

Date/Time: *Tuesday, April 26, 2011* from 9 a.m. – 11 a.m.

Location: 60 East Wing, Main Capitol, Harrisburg, PA 17120

Background: A business opportunity was realized in 2009 when a dilapidated car wash on North Atherton Street in Patton Township, State College PA was purchased and a new modern state of the art car wash was built in its place. (See attached photos.) The new car wash, named the RedLine Speedshine, incorporated energy saving features such as geothermal heating, energy efficient lighting with motion sensors, water reuse systems, high efficiency on-demand water heaters, automatic garage doors, and state of the art computer controlled equipment to maximize customer satisfaction. A total of five full time and ten part time jobs were created.

Water is the primary resource utilized by a car wash. During discussions with the local sewer and water authorities we were encouraged to build a second facility in a location off Shiloh Road in College Township that would use the beneficial re-use water from the sewer treatment plant. In order to meet Chesapeake Bay regulations and high quality stream discharge regulations, our local sewer authority (UAJA) installed a high capacity reverse osmosis (RO) system to turn sewer water into purified water that was intended to serve businesses like the now defunct Corning glass plant. However, with Corning now out of business, there were not many commercial uses for the RO water other than laundry facilities for a local hotel or watering the grass for a local golf course. Therefore, UAJA was thrilled when we agreed to build a second RedLine car wash facility on the Shiloh Road exit on Rt. 99 that would not only use the water for washing cars but would also remove heat from the water through a geothermal system. It was a win - win for the car wash business and for the local sewer authority. I thought "this is going to be easy" since we used the same basic design as RedLine North Atherton and duplicated it on Shiloh Road. The testimony chronicles the regulatory challenges that we experienced from the local township, PENN DOT, and financing rule changes that increased the cost and time necessary to create a business.

We initiated second building process using the same engineering firm (Sweetland Engineering) and the same construction company (Veronesi Building). Construction started in June and was completed in November. The problems we observed in the building process were due to four factors:

1. Ordinances being created that resulted in unintended consequences.
2. Inflexibility driven by the fear of creating precedence despite common sense solutions being obvious to all.
3. A complete disregard for how the ordinances or regulations affect project costs. It is easy to be inflexible when the regulation bodies are not paying for the cost of compliance.
4. A lack of a sense of urgency. Unneeded delays and a lack of accountability for addressing problems because the regulators have the power to stop construction. They hold builders and owners hostage until their demands are met.

Site plans were submitted early in July. From there we ran into a series of problems which will be described in more detail:

1. **Lighting Ordinance for minimum parking lot lumens.**
2. **PENN DOT High way Occupancy Permit (HOP)**
3. **Property Appraisal**
4. **PENN DOT Handicapped law compliance facility update**

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5. **Free Standing sign ordinance**
6. **L&I boiler regulation mis-interpretation for geothermal system**

Lighting ordinance: During plan approval we were made aware that recent College Township regulations required all paved parking areas to be lighted at a minimum lumen level. In order to meet the ordinance, we would have to install pole lights every 50' in the parking lot just like it was a Wal-Mart parking lot. We explained in vain that people drive their cars into the wash and do not park and walk. Installing pole lights throughout the site would create obstacles to drive around and create driving hazards. We further explained that what we were asking for was typical of how all car washes are designed and exactly the same as the North Atherton RedLine. After numerous township meetings, engineering fees, and appealing to common sense, the Township relented. Their hesitation was driven by creating a precedent that would open the Township to law suits. Reluctantly a compromise was struck by drawing a zone around the car wash that would have to meet minimum lumen requirements. The compromise still required a pole light to be installed in front of the handicapped stall 10 feet from the building.

PENN DOT Highway Occupancy Permit (HOP): The site had previously been a former State Police barracks and was occupied by a Massage school before we purchased it and proceeded with demolition. We deliberately chose to use the exact same locations for the two entrances so we would not have to request a new HOP and incur delays from PENN DOT. However upon submission PENN DOT informed us they have no records of the existing drive being permitted and that we would be forced to formally submit a HOP. How can a 30 year old building that was used by the State Police and a massage school not have a HOP? Upon investigation we found that PENN DOT had installed the drive way and that they had never formally completed the permitting process. Without accepting accountability for their mistake, we were forced to generate all the drawings at our costs and seek formal approval for the project to continue.

Property Appraisal: At this point in July the building drawings, equipment list, and site work was complete and the bank required a formal appraisal to close the loan. Curtin Real Estate Appraisals was selected to do the appraisal. Despite giving Curtin reams of cost data, the appraisal came in \$700,000 below our construction costs of 2.6 million. This created a shortfall from the bank loans needed to do the project and almost put a nail in our coffin. Curtin agreed to meet with us and explained that the most recent cost estimates from a national cost estimator did not fully support our construction costs. The flag pole we added for \$5,000 had to be eliminated because their comparables did not show flagpoles, the \$75,000 for red steel roofing had to be eliminated because most car washes use shingles, the maintenance free Extrutech® mildew resistant plastic walls inside the wash for \$100,000 had to be eliminated because their comparables showed most car washes simply paint the block, the \$120,000 worth of garage doors had to be eliminated because most car washes don't use geothermal heated bays, the \$180,000 geothermal system connected to the beneficial reuse sewer water had to be eliminated because most car washes do not use geothermal, and the site work credit was reduced from \$400,000 to \$200,000 because most car washes were built on sites with fewer regulations, and so on. The Appraiser told us that we "over improved" the site and he could not give us credit for things we did that were above and beyond what a typical car wash looked like since it functioned in the same manner. The Appraiser went on to explain that the numbers he provided were for Market Value to make sure the bank could resale the project without any significant losses in a reasonable amount of time. As you'll read in the next section, we were required to install handicap sidewalks at the other three corners of our intersection. Since we were spending money "off site", this money was not going to provide equity in our property. It did not matter that the construction costs could be verified from the exact same

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design build one year prior. The project could only be completed by obtaining additional funding through a credit line guaranteed by my personal residence.

PENN DOT Handicapped law compliance facility update: College Township required us to put in sidewalks and more PENN DOT fun began. PENN DOT explained that since we were the first business to install sidewalks on this intersection, we had to pay for all the upgrades to bring the intersection into compliance with new handicapped regulations enacted since the intersection was built by PENN DOT. PENN DOT told us the reason we had to pay for the upgrades was driven by the fear that PENN DOT could be sued by a group of attorneys that travel the state and claim to represent the handicapped and look for intersections that only have one corner completed. The attorneys claim that a handicapped person could cross at our new sidewalk and could be stuck at the other side with nowhere to go. Unfortunately when the traffic lights were put in by PENN DOT the poles were set too high and the site would not comply with the new 2% slope requirements requiring us to reset all the poles. In addition we had to install cross walks and sidewalks on the other three intersections even though we did not own the land. Finally we had to re-time the lights because the crossing time was changed from 3.5 to 4 seconds. Our engineers estimated the cost of PENN DOT compliance was going to exceed \$200,000. Deadlock ensued and PENN DOT hardened their position. Fortunately George Khoury (Former head of the Clearfield District Office) was a personal friend and he helped coach me by providing advice on how to approach the PennDOT personnel with counter-proposals. PENN DOT softened their stance and started to work with us more openly. Unfortunately the compromise required us to move one of the painted crosswalk lines which required us to pay two PENN DOT engineers to stand and watch the work for two days. In addition, we had to incur more engineering fees to seek approval of a technical infeasibility request to waive the 2% grade requirement of the intersection installed by Penn DOT, so we did not have to reset the traffic light poles, which were also installed by Penn DOT. The work is still not complete because of delays and lack of response for approvals and the cost to meet PENN DOT's requests will exceed \$100,000.

Free Standing Sign Ordinance: The car wash opened in November under a temporary permit from PENN DOT requiring the installation of orange barriers blocking the intersection from Handicapped use. In December College Township approached us and said they were going to shut us down because we were in violation of their recently enacted free standing sign ordinance. Despite prior approval of the site plans they now classified the menu signs in front of the automatic car wash bays as being free standing because they were screwed into the ground. While they agreed the menu signs were a necessity to inform customers on the choice of washes and they did not object to them personally, they could not approve them for fear of setting precedent and being sued. They agreed the menus were not visible from the road but were still classified as free standing and had to be removed. I even asked what a fast food restaurant like McDonalds would do without menu signs they explained that no fast food restaurants had built in the Township and any new ones would have to comply as well. I thought logic would prevail if the Township would grant us an exemption because of unintended consequences of a poorly written ordinance. The Township hardened their stance and told us there was no appeal process available to us. To meet the Township ordinance we had to remove signs like "Open 24 hours" from the wall to decrease our signage square footage. We were permitted to hang two of the three free standing signs upside down from the eve of the roof so customers would understand which wash to select before they paid. The cost to move the signs and make the changes exceeded \$5,000. (See attached photos).

L&I boiler regulation mis-interpretation for geothermal system: We installed a state of the art energy efficient geothermal system with on demand back up heaters to save energy. We were sure we were in compliance because our engineer is an expert in L&I regulations and the equipment we installed met all

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requirements. However, an inspection by L&I classified the system as non-conforming because their interpretation of the regulations were different than what was written. "Everyone interprets the regulations different than we do" and "don't pay attention to what is written, pay attention to what we tell you". Despite numerous appeals with the written regulations in hand and despite personal requests to Daniel Ruzansky Director of L&I by Senator Jake Corman and Representative Kerry Benninghoff, we remain deadlocked. The geothermal engineer is so appalled by L&I's illogical stance that he has agreed to represent us at no charge as we continue the appeal process the whole way to the Supreme Court if necessary. Again the L&I inspectors are worried about being subject to a law suit because they had misinterpreted the regulations to others in the same fashion.

Summary: Despite the need to create jobs and support small businesses, regulators continue to throw roadblocks and pass costs on to entrepreneurs, builders, consumers, and those willing to take personal financial risks to create businesses the public needs. Perhaps it is because most regulators or government employees have never taken a risk to build a business, they view their responsibilities as a "stop sign" all in the name of the public health and safety good. They flaunt their power by threatening to shut you down or delay approvals to prevent the business from proceeding. They live behind a fear of setting precedents or making decisions (albeit logical) that could be subject to a lawsuit by special interest groups. They are protected by a secure government job that does not measure their success by the jobs they create or the businesses they help grow. It is safer to be a stop sign and punish those who are willing to risk everything they own to create economic prosperity that in turn pays their salary. Regulations that make the developer or consumer pay are rampant without any personal accountability on those enacting such measures. Most government regulators have forgotten who pays their salaries and are blind to the fact that a lack of economic prosperity will eliminate the need for their jobs. They report only to a system that has a culture of making it as tough as possible for business all in the name of public health and safety.

Suggestions for a Culture change to improve the business generation climate in PA: If I were in your shoes listening to my testimony, I would feel frustrated and helpless not knowing how to create cultural change in a system that values placing stop signs in front of businesses. Please consider the following ideas as tipping points that may cause a wave of changes in the way regulator bureaucrats think. We have to change the risk and reward system so business growth and helpfulness are rewarded rather than stop sign behaviors.

1. Any new ordinance that is created needs to have a preliminary trial implementation period of five years where the public, developers, and entrepreneurs have a business friendly appeal process that will allow unintended consequences or excessive costs of implementation to be brought into public scrutiny. When a new regulation or ordinance is enacted, there are always unintended consequences that come into the light when entrepreneurs try to follow those regulations. Despite illogical unintended consequences, Zoning officers are forced to take a rigid approach to compliance to enforce the law. The current process discourages appeals and common sense thinking. Logical thinking is replaced by fear that a precedent might be set if the ordinance is not enacted exactly as it was written.
2. It is too easy and commonplace to enact ordinances where someone else has to pay for them. It is time to require every new ordinance to perform a cost benefit analysis that measures the impact on job creation before implementation. There is no accountability to those enacting ordinances to those who pay their salaries. Costs are passed on with a cavalier attitude to those who create businesses. New regulations that do not come into effect until someone wishes to improve their properties are job killers. The cost of complying with every past ordinance

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enacted when someone wishes to improve their business is creating taxation without representation.

3. There are no consequences to Townships that are business unfriendly. Rob Veronesi sat on the Centre Region Appeal Board for five years and never heard one appeal because the appeal process took longer than the completion of the project. That tells me there is no effective timely working process for the appeal and review of regional regulations. The enforcement officers and regulators have absolute power and they use it. If a statewide review system where developers and entrepreneurs could rate the township and regulatory agencies on helpfulness, fairness, attention to development costs, timeliness, and business friendly climate, things would change. What gets measured gets improved. What gets rewarded gets repeated. If a Township was on the bottom of a list for business friendliness, the public would ask why. If a Township was denied State revenue because they were business unfriendly, they would respond. There are no consequences for being business unfriendly. We need to create a system that discourages "stop sign thinking", and rewards business friendly relationships with their tax payers. Just think how PENN DOT and L&I would respond if they found themselves labeled as business unfriendly, unresponsive, and cavalier about passing costs on to those who desire to make a difference in our economy. I am sure Governor Corbett would want to have a serious talk with the heads of those departments if they were responsible for slowing the growth of the economy and showed disregard for the customers they serve. Unfortunately that is exactly what is happening because we do not have a feedback system where customers can honestly rate those who hold the absolute power in our regulatory branches.

I certify these statements as true and accurate representations of my testimony:

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Photos of RedLine SpeedShine North Atherton (Patton Township first construction):



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RedLine Shiloh (College Township second construction)



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RedLine Shiloh free standing menu signs (anchored to ground) that did not meet the new sign ordinance



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RedLine Shiloh menu signs removed and hung from building to comply with the new sign ordinance



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Old car wash facility on North Atherton (Patton Township) that we demoed to create the RedLine

