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*Chanceford Aviation Properties v. Chanceford Township Board of Supervisors*

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The Use of Mandamus to Compel a Zoning Ordinance: *Chanceford Aviation Properties v. Chanceford Township Board of Supervisors*

**Pennsylvania Statutes — Construction and Operation — Construction as Mandatory or Directory — Mandamus — Zoning Ordinance** — The Supreme Court of Pennsylvania found that the language of the Airport Zoning Act requires a municipality with a public airport to enact and enforce an airport hazard zoning ordinance.


To benefit her public airport, Loretta Baublitz sought a court order compelling Chanceford Township to enact certain legislation. She contended that a state statute, enacted over twenty years ago, mandated such action by the township. Her case depended upon the statutory interpretation of the legislature’s use of the word “shall.”

On five acres of land situated in Chanceford Township, York County, Pennsylvania, Levere Baublitz (Mr. Baublitz) owned and operated a private airport. The enactment of the 1979 Chanceford Township zoning ordinance situated the airport in an agricultural zone, but the airport continued to operate as a pre-existing non-conforming use. After acquiring a license from the Pennsylvania Department of Transportation, Bureau of Aviation (Penn...
Mr. Baublitz operated his airport as a public airport. In 1984, the Pennsylvania legislature enacted the Airport Zoning Act (AZA or Act), which required that state municipalities in which a public airport is situated adopt an airport hazard zoning ordinance. Within a year of enacting AZA, the Pennsylvania legislature notified each township containing a public airport of the specifications mandated by AZA. When no action had been taken by Chanceford Township by 1991, Mr. Baublitz took it upon himself to inform the township of its obligations. Although meetings were held on the issue in both 1993 and 1994, the township took no further steps towards establishing an ordinance to meet the requirements of AZA.

Loretta Baublitz (Mrs. Baublitz) took over the airport after her husband’s death in 2000 with the receipt of a letter of continued operation issued by PennDOT. However, PennDOT refused to issue a new public airport license until Baublitz’s airport complied with Federal Aviation Administration (FAA) regulations and the township adopted an airport hazard zone. Two years later, Mrs. Baublitz, like her husband, requested that the township meet its requirements under AZA by adopting an airport zoning ordi-

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7. *Chanceford*, 923 A.2d at 1101. The Aviation Code defines “public airport” as “an airport which is either publicly or privately owned and which is open to the public.” 74 PA. CONS. STAT. ANN. § 5102 (West 1993).
8. 74 PA. CONS. STAT. ANN. § 5912 (West 1993). This statute provides:

In order to prevent the creation or establishment of airport hazards, every municipality having an airport hazard area within its territorial limits shall adopt, administer and enforce, under the police power and in the manner and upon the conditions prescribed in this subchapter and in applicable zoning law unless clearly inconsistent with this subchapter, airport zoning regulations for such airport hazard area. The regulations may divide the area into zones and, within the zones, specify the land uses permitted and regulate and restrict the height to which structures may be erected or objects of natural growth may be allowed to grow. A municipality which includes an airport hazard area created by the location of a public airport is required to adopt, administer and enforce zoning ordinances pursuant to this subchapter if the existing comprehensive zoning ordinance for the municipality does not provide for the land uses permitted and regulate and restrict the height to which structures may be erected or objects of natural growth may be allowed to grow in an airport hazard area.

*Id.* § 5912(a).
9. The Aviation Code defines “airport hazard” as “[a]ny structure or object, natural or manmade, or use of land which obstructs the airspace required for flight of aircraft in landing or taking off at an airport or is otherwise hazardous to the landing or taking off of aircraft.” *Id.* § 5102.
11. *Id.* at 1101.
12. *Id.
13. *Id.* at 1102.
14. *Id.
15. *Baublitz*, 865 A.2d at 976-77.
nance. Again the township held a series of meetings, but by 2003, no such ordinance had been adopted.

Mrs. Baublitz initiated suit against the Chanceford Township Board of Supervisors in July 2003, petitioning the Court of Common Pleas of York County for a writ of mandamus to compel Chanceford Township to complete its requirements under AZA by adopting an airport hazard zoning ordinance. After both parties moved for summary judgment, the trial court granted Mrs. Baublitz’s motion and issued a writ to compel the enactment of an airport hazard zoning ordinance. The trial court reached its conclusions by interpreting the language of AZA as a legislative mandate for the creation of an airport hazard zoning ordinance.

The township appealed to the Commonwealth Court of Pennsylvania and argued that the language of AZA is directory rather than mandatory. After indicating the significance of the Act’s title, the commonwealth court found that the effect of AZA was a grant of power rather than a legislative command. The majority found that the existing Chanceford Township zoning ordinance

16. Chanceford, 923 A.2d at 1102.
17. Id.
18. A “writ of mandamus” is defined as “a writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly.” BLACK’S LAW DICTIONARY 980 (8th ed. 2004).
19. Chanceford, 923 A.2d at 1102; Baublitz, 865 A.2d at 976-77.
20. Baublitz, 865 A.2d at 977-78.
22. Baublitz, 865 A.2d at 977.
23. Id. at 978.
24. CHANCEFORD, PA., ORDINANCE § 411 (1979). This ordinance provides:

Where indicated as permitted by special exception, this use is permitted subject to the following:

a. Lot Area: ten (10) acres minimum.

b. The approach zone to any of the proposed runway landing strips shall be in accordance with the regulations of applicable Federal and/or State agencies.

c. There shall be no existing flight obstructions such as towers, chimneys or other tall structures or natural obstructions outside of the airport and located within the proposed approach zones.

d. Any building, hangar or structure shall be located a sufficient distance away from the landing strip in accordance with the recommendations of applicable Federal and/or State agencies.

e. Building heights in airport approach zones shall be limited to provide a clear glide path from the end of the usable landing strip. The glide path shall be a plane surface laid out in accordance with the operating characteristics of the aircraft for which the airport is designed. The first five hundred (500) feet of the glide path shall be wholly within the airport property.

f. The facility must be permitted under applicable PAA and FAA regulations.
regulating structures adjacent to airport grounds permitted as a special exception sufficed to meet the requirements of AZA. Mrs. Baublitz appealed to the Supreme Court of Pennsylvania, but prior to oral arguments, Chanceford Aviation Properties (Chanceford Aviation) acquired title to the airport and replaced Mrs. Baublitz as the appellant.

The Pennsylvania Supreme Court granted allocatur to decide three issues: (1) whether AZA requires the township to enact an airport hazard zoning ordinance, (2) whether section 411 of the Township Zoning Ordinance satisfies the requirements of AZA, and (3) whether a mandamus suffices to order a municipality to adopt an ordinance required by the legislature.

In an opinion written by Justice Eakin, the court reversed the decision of the commonwealth court, finding that the language of AZA required a municipality with a public airport to enact and enforce an airport hazard zoning ordinance. When reviewing the second issue, the court again disagreed with the commonwealth court, deciding that the existing zoning ordinance did not comply with AZA because the ordinance’s scope covered operating an airport as a special exception. On the third issue, Justice Eakin responded that a mandamus action may be used to order a municipality to comply with AZA’s requirements where notice was given and no action to comply had been taken.

In deciding whether AZA mandated the adoption of an airport hazard zoning ordinance, the majority relied upon the rules of statutory construction to interpret the Act in accordance with the legislature’s intent. Under these rules, words that are clear and unambiguous serve as the best evidence of the legislature’s intent. Upon examining the language of AZA, the majority focused on the use of the word “shall.” The court stated that past cases had generally defined the word “shall” as a legislative mandate.

g. If in the Conservation Zone or Agricultural Zone, the provisions of Sections 206.9 and 207.9 shall apply to the site location and to reduce the number of dwelling units permitted on the tract where the use is located.

Id.
25. Baublitz, 865 A.2d at 978.
27. Id. at 1103-04.
28. Id. at 1101, 1106, 1109.
29. Id. at 1106-07.
30. Id. at 1108.
31. Chanceford, 923 A.2d at 1104.
32. Id.
33. Id.
34. Id.
Chanceford Aviation argued that "shall" should be interpreted as mandatory because the language of the act is clear and unambiguous.\textsuperscript{35} It also argued that a mandatory interpretation was consistent with the purpose of AZA.\textsuperscript{36}

Conversely, in arguing that the legislature intended only a directory act, the Chanceford Township Board of Supervisors focused on the heavy burden that Chanceford Aviation’s interpretation would place on municipalities in the state.\textsuperscript{37} The township also argued that a reversal of the commonwealth court’s decision would benefit the airport at the expense of a significant number of adjacent lots.\textsuperscript{38} In support of the township’s argument, the Pennsylvania State Association of Township Supervisors (PSATS) advocated in their amicus curiae\textsuperscript{39} brief for a directory interpretation based on AZA’s ambiguous language.\textsuperscript{40} By examining AZA in order to identify the legislature’s purpose, Justice Eakin found that, in enacting AZA, the legislature intended the act as mandatory, noting the use of the words "shall" and "requires."\textsuperscript{41}

Next the court considered whether the current Chanceford Township Zoning ordinance met the requirements of AZA.\textsuperscript{42} Both the township and PSATS asserted that the commonwealth court correctly determined that section 411 of the existing ordinance fulfilled AZA’s obligations by incorporating both state and federal regulations.\textsuperscript{43} In answering the second issue, Justice Eakin relied on AZA’s goal of preventing the creation or establishment of airport hazards, and found that section 411’s scope was too narrow to achieve that objective.\textsuperscript{44} The existing ordinance regulated land where an airport would be established as a special exception,\textsuperscript{45} rather than a non-conforming use.\textsuperscript{46} The ordinance did not com-

\begin{itemize}
\item \textsuperscript{35} Id.
\item \textsuperscript{36} Chanceford, 923 A.2d at 1104.
\item \textsuperscript{37} Id. at 1104-05.
\item \textsuperscript{38} Id. at 1105.
\item \textsuperscript{39} "Amicus curiae" is defined as "a person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter." BLACK'S LAW DICTIONARY 93 (8th ed. 2004).
\item \textsuperscript{40} Chanceford, 923 A.2d at 1105.
\item \textsuperscript{41} Id. at 1105-06.
\item \textsuperscript{42} Id. at 1106-07.
\item \textsuperscript{43} Id. at 1107.
\item \textsuperscript{44} Id.
\item \textsuperscript{45} "Special exception" is defined as "an allowance in a zoning ordinance for special uses that are considered essential and are not fundamentally incompatible with the original zoning regulations." BLACK'S LAW DICTIONARY 1432 (8th ed. 2004).
\item \textsuperscript{46} Chanceford, 923 A.2d at 1107.
\end{itemize}
ply with AZA, because the township failed to demonstrate that section 411 applied to airport hazard areas in addition to airports allowed as special exceptions.47

Finally, the court determined whether a writ of mandamus was the appropriate remedy to compel enactment of the zoning ordinance.48 Three arguments were made opposing the use of a mandamus to force legislative action.49 According to the township, the power to enact a zoning ordinance was purely legislative, and therefore, the judicial remedy of mandamus was inappropriate.50 Additionally, the township argued that mandamus should not be granted because it never expressly refused to obey AZA.51 As its third argument, the township asserted that Chanceford Aviation could take it upon itself to regulate surrounding airspace by purchasing rights of way or title to adjacent lots or the rights to the airspace of these lots.52 Justice Eakin focused on the township's inaction since receiving notice of AZA's requirements and rejected the township's arguments.53 The township's failure to act for over twenty years exhibited a clear refusal to perform its duty, making the mandamus action appropriate.54 Furthermore, AZA commands the compliance of the township rather than that of the property owner, and therefore, could not be complied with by actions taken solely by Chanceford Aviation.55

Justice Saylor filed a dissenting opinion, claiming, in contrast, that section 411 of the Chanceford Township Ordinance complied with the requirements of AZA.56 Although concurring with the majority's interpretation of AZA as mandatory, he interpreted section 411 as regulating heights and objects in airport hazard areas.57 Furthermore, the existing ordinance furthered the legislature's intent to prevent airport hazards, because it provided a special exception to allow an airport within a township, subject to certain conditions.58 While finding that section 411 generally complied with AZA, Justice Saylor noted that, because the ordinance

47. Id.
48. Id. at 1108-09.
49. Id.
50. Id. at 1108.
51. Chanceford, 923 A.2d at 1108.
52. Id. at 1109.
53. Id. at 1108.
54. Id. at 1108-09.
55. Id.
56. Chanceford, 923 A.2d at 1109 (Saylor, J., dissenting).
57. Id.
58. Id. at 1110.
applied only to special exceptions, additional regulations would be required to comply with AZA. The dissent realized that the case sub judice may have presented such a situation because Chanceford Aviation's airport functioned as a nonconforming use rather than a special exception, and therefore, Justice Saylor concluded that the case should be remanded for further determination of the applicability of section 411.

Justice Eakin's opinion relied upon a body of case law dealing with statutory construction that has evolved over the past century. In 1956, the Pennsylvania Superior Court focused on the distinctions between mandatory and directory statutes in Borough of Pleasant Hills v. Carroll. Pleasant Hills involved the imposition of a wage tax under the authority of a tax act passed in 1947. The tax act required that any subsequent tax passed must expressly state the tax act as its authority for the imposed tax. The defendant, Herbert Carroll, argued that since the wage tax adopted by the Borough of Pleasant Hills (Borough) lacked such a provision, the tax was invalid. The Borough argued that the lack of the statement did not invalidate the tax since the provision was merely directory rather than mandatory. The court noted that the use of the word "shall" generally means the legislature intended the act to be a mandate, but noted that "shall" may be interpreted as a directive if indicated by legislative intent. Thus, in order to determine the legislature's intended meaning of the word "shall," the court studied the act as a whole, its purpose,

59. Id.
60. Id.
61. Chanceford, 923 A.2d at 1104 (majority opinion).
63. Pleasant Hills, 125 A.2d at 468.
64. Id.
65. Id. The Tax Act of 1947, as amended in 1953, stated:
   Every ordinance or resolution which imposes a tax under the authority of this act shall impose such tax for one year only and shall be passed or adopted, if for a school district, during the period other school taxes are required by law to be levied and assessed by such district. Each ordinance and resolution shall state that it is enacted under the authority of the act of June twenty-fifth, one thousand nine hundred forty-seven and its amendments.
66. Pleasant Hills, 125 A.2d at 468.
67. Id. The court stated:
   Except when relating to the time of doing something, statutory provisions containing the word shall are usually considered to be mandatory, but it is the intention of the legislature which governs, and this intent is to be ascertained from a consideration of the entire act, its nature, its object and the consequences that would result from construing it one way or the other.

Id.
and the effects that both interpretations would yield.\textsuperscript{68} The court held that the legislature intended the act to be directory, and the failure of the tax to indicate its reliance on the tax act did not invalidate the tax.\textsuperscript{69} Furthermore, while the Borough failed to refer to the tax act in the body of the tax, it did state the tax act as the authority for the tax in the advertisement sent to the taxpayers.\textsuperscript{70}

When the Pennsylvania Supreme Court faced the issue of mandatory versus directory statutes in \textit{Francis v. Corleto},\textsuperscript{71} the court relied upon the precedent established in \textit{Pleasant Hills}.\textsuperscript{72} \textit{Francis} involved a mandamus action brought by former employees of the city of Philadelphia, discharged for alleged misconduct and criminal acts.\textsuperscript{73} The plaintiffs argued that, under the city’s Civil Service Regulations and the Retirement System Ordinance, the city was required to remit terminal vacation pay and payments made to a pension fund.\textsuperscript{74} To determine whether mandamus was appropriate to compel action by the city, the court had to decide whether the city had a mandatory duty to pay the withheld sums.\textsuperscript{75} In regard to the terminal vacation pay, the plaintiffs relied upon the use of the word “shall” in the Civil Service Regulation to indicate that the city was obligated to repay such money upon termination.\textsuperscript{76} Essentially, the city had denied payment of these funds by off-setting the amount due by claims held by the city against the former employees.\textsuperscript{77} The court, as in \textit{Pleasant Hills}, interpreted the word “shall” in compliance with what the city council had intended when adopting the regulations.\textsuperscript{78} Thus, the \textit{Pleasant Hills} and \textit{Francis} courts adhered to the rule that,

\textsuperscript{68} \textit{Id.} at 469.
\textsuperscript{69} \textit{Id.}
\textsuperscript{70} \textit{Id.} at 468. The court stated: Both mandatory and directory provisions of the legislature are meant to be followed. It is only in the \textit{effect} of non-compliance that a distinction arises. A provision is mandatory when failure to follow it renders the proceedings to which it relates illegal and void; it is directory when the failure to follow it does not invalidate the proceedings.
\textsuperscript{71} 211 A.2d 503 (Pa. 1965).
\textsuperscript{72} \textit{Francis}, 211 A.2d at 509.
\textsuperscript{73} \textit{Id.} at 504-05.
\textsuperscript{74} \textit{Id.}
\textsuperscript{75} \textit{Id.} at 506.
\textsuperscript{76} \textit{Id.} at 508-09.
\textsuperscript{77} \textit{Francis}, 211 A.2d at 506.
\textsuperscript{78} \textit{Id.} at 509. The court stated: “[u]nder the circumstances here presented, we will not construe the word in its mandatory sense . . . . It would be incredible to hold . . . that such result was intended or would have been countenanced by City Council in adopting the civil service regulations.” \textit{Id.}
while "shall" was generally interpreted as mandatory, a court should focus on legislative intent to decide whether a statute was mandatory or directory.\textsuperscript{79}

Just as many other states have done, Pennsylvania has codified rules of statutory construction to aid courts faced with these issues—such as whether a statutory provision is mandatory or directory.\textsuperscript{80} The Pennsylvania legislature first adopted the Statutory Construction Act\textsuperscript{81} in 1937, and reenacted it in 1972 with slight modifications.\textsuperscript{82} The Statutory Construction Act of 1972, as it is known, states that a court must adhere to the Act’s rules unless doing so would render a result different than that intended by the legislature.\textsuperscript{83} In fact, the Pennsylvania Supreme Court referenced this Act when interpreting the word "shall" in the \textit{Chanceford} case.\textsuperscript{84}

The 1989 case of \textit{Coretsky v. Board of Commissioners},\textsuperscript{85} displayed how the Statutory Construction Act of 1972 changed the manner in which Pennsylvania courts handled whether a statute is mandatory or directory.\textsuperscript{86} In \textit{Coretsky}, the Pennsylvania Supreme Court used the Statutory Construction Act of 1972 to decide whether a provision of the Municipalities Planning Code mandated government agencies to cite to a statute or ordinance provision if they rejected a subdivision application.\textsuperscript{87} The plain language of the provisions in question expressly stated the word "shall," and the parties’ arguments centered on the interpretation of the word "shall" as mandatory or directory.\textsuperscript{88} In deciding the correct interpretation of "shall," the court cited the Statutory Construction Act of 1972, specifically noting that decisions on the legislature’s intent should only be made when the words of a statute are unclear.\textsuperscript{89} Since the court found the words of the provision in

\footnotesize{\textsuperscript{79} Id.  \\
\textsuperscript{80} 3 \textsc{Kenneth H. Young, Anderson's American Law of Zoning} § 18:2 (4th ed. 1996).  \\
\textsuperscript{82} Young, supra note 80, § 18:2.  \\
\textsuperscript{83} 1 Pa. Cons. Stat. Ann. § 1901 (West 2008). Section 1901 provides: "[i]n the construction of the statutes of this Commonwealth, the rules set forth in this chapter shall be observed, unless the application of such rules would result in a construction inconsistent with the manifest intent of the General Assembly." Id.  \\
\textsuperscript{84} \textit{Chanceford}, 923 A.2d at 1104.  \\
\textsuperscript{85} 555 A.2d 72 (Pa. 1989).  \\
\textsuperscript{86} \textit{Coretsky}, 555 A.2d at 74.  \\
\textsuperscript{87} Id.  \\
\textsuperscript{88} Id. at 73-74.  \\
\textsuperscript{89} Id. The court cited 1 Pa. Cons. Stat. Ann. § 1921(c) (West 2008), which provides: "[w]hen the words of a statute are not explicit, the intention of the General Assembly may be ascertained . . . ." Id.}
question clear, the majority used the common definition of the word "shall" to hold that the Municipalities Planning Code mandated a governing agency that rejected a subdivision plan to cite to the ordinance upon which that governing agency relied.90

In Modern Trash Removal v. Department of Environmental Resources,91 the court depicted the post-1972 change by expressly noting distinctions between the current and past precedents.92 The Modern Trash case concerned whether the Municipal Waste Planning, Recycling and Waste Reduction Act93 (Waste Act) mandated the payment of certain fees by a land-fill owner under all circumstances, free from exception.94 When the Environmental Hearing Board ordered the landfill owner to pay the fees, it relied upon the holding of Coretsky.95 On appeal to the Commonwealth Court of Pennsylvania, the landfill owner argued that the Francis opinion controlled, and application of the precedent used in Francis bolstered the notion that the provision of fees was merely directory.96 The court disagreed and refused to follow Francis, stating that the Statutory Construction Act determined the applicable law for statutory construction.97 Under the Statutory Construction Act, a court may consider the legislature's intent only when the words of a statute are unclear and ambiguous.98 Therefore, after finding the words of the Waste Act clear, the court interpreted "shall" according to its general, mandatory meaning.99

The decisions prior to Modern Trash provided the basis for deciding the later cases cited by the Pennsylvania Supreme Court in the Chanceford case.100 One such case, Oberneder v. Link Computer Corporation,101 which followed Modern Trash, was cited by the Chanceford court when setting forth its rules of statutory con-

90. Coretsky, 555 A.2d at 74. The majority opinion provides: "[g]enerally, words are construed to mean their common usage. By definition, 'shall' is mandatory. Accordingly, there is no latitude for overlooking the plain meaning of [the provision] to reach a more desired result." Id. (citation omitted).
92. Modern Trash, 615 A.2d at 826.
94. Modern Trash, 615 A.2d. at 825.
95. Id. at 826.
96. Id.
97. Id. The court stated: "[i]n Francis, our Supreme Court referred to the intention of the legislature when construing the word shall . . . . Francis, however, was decided before the enactment of the Statutory Construction Act of 1972 . . . ." Id.
98. 1 PA. CONS. STAT. ANN. § 1921 (West 2008).
99. Modern Trash, 615 A.2d at 826.
100. Chanceford, 923 A.2d at 1104.
struction. Oberneder determined whether the Wage Payment and Collection Law mandated an award of attorney's fees to an employee prevailing in his suit under the statute. Link Computer Corporation asserted that the trial court erred in granting attorneys’ fees to its former employee, reasoning that the law's provision providing for attorneys’ fees was merely discretionary. While the Francis holding provided the basis for Link's argument, the court relied upon the Statutory Construction Act and Coretsky, making reference to Modern Trash as well. The Supreme Court of Pennsylvania, repeating the definition of “shall” stated in Coretsky, held that an award of attorneys’ fees to an employee prevailing in a Wage Payment and Collection Law suit was mandatory.

The precedent upheld in Oberneder underwent some short-lived alterations in Gardner v. Workers’ Compensation Appeal Board (Genesis Health Ventures). In Gardner, the Supreme Court of Pennsylvania determined the mandatory nature of a provision of the Workers’ Compensation Act setting forth a time restraint on when an insurer may request an injured employee to complete an impairment rating evaluation (IRE). The results of the IRE determine whether an injured employee will receive total or partial disability compensation benefits. When interpreting the statutory provision, the court noted that its determination rested

102. Chanceford, 923 A.2d at 1104.
103. See 43 PA. STAT. ANN. §§ 260.1-260.12 (West 1992), which provides: “[t]he court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs for reasonable attorneys' fees of any nature to be paid by the defendant.” Id. § 260.9a(f).
104. Oberneder, 696 A.2d at 148.
105. Id. at 150.
106. Id. The court asserted: “[a]ppellants rely upon Francis for the proposition that shall may be merely directory depending upon the legislature's intent. Francis however, was decided before the enactment of the Statutory Construction Act, which dictates that legislative intent is considered only when a statute is ambiguous.” Id. (citation omitted).
107. Id. The court stated: “[b]y definition, shall is mandatory. Accordingly, there is no room to overlook the statute's plain language to reach a different result.” Id. (citing Coretsky, 555 A.2d at 74.).
108. Id. at 151.
110. Gardner, 888 A.2d at 759. The statutory provision in question states:

When an employee has received total disability compensation pursuant to clause (a) for a period of one hundred four weeks, unless otherwise agreed to, the employee shall be required to submit to a medical examination which shall be requested by the insurer within sixty days upon the expiration of the one hundred four weeks to determine the degree of impairment due to the compensable injury .

77 PA. STAT. ANN § 511.2(1) (West 2002).
111. Gardner, 888 A.2d at 759.
on the word "shall," and while the general rule provides that "shall" by definition is mandatory, the word has also been interpreted to be merely directory. After explaining the dual nature of the word "shall," the court concluded that the word was not free from ambiguity, and proceeded under the authority of the Statutory Construction Act to inquire into the legislative intent. The court ultimately interpreted the use of the word "shall" in the specified provision of the Workers' Compensation Act as mandatory.

In Gardner, Justice Nigro filed a concurring opinion, agreeing with the interpretation of the term "shall" as mandatory when used in the Workers' Compensation Act, yet disagreeing with the majority's finding that the meaning of "shall" was ambiguous. Referring to Oberneder, Justice Nigro reasserted that "shall" denoted a legislative mandate, and therefore viewed the majority's divergence into the legislative intent of the statute unnecessary.

The Chanceford court cited to Gardner when establishing its rules of statutory construction. While the court realized that "shall" has both a mandatory and a discretionary interpretation, the court did not express the same sentiments as the Gardner majority—specifically that the word "shall" itself was ambiguous. Rather, the Chanceford majority viewed Gardner as standing for the proposition that the context in which "shall" is used, rather than the word itself, may create ambiguity.

Koken v. Reliance Insurance Co., decided a year before Chanceford, provides more insight into the rules used by the Chanceford court. The Koken court faced the issue of whether

112. Id. at 764-65 (citing Commonwealth v. Baker, 690 A.2d 164 (Pa. 1997)).
113. Id. at 765. The court stated:

[W]e must construe the terms of a statute according to their common and approved usage. Given that this court has found 'shall' to be susceptible to diametrically opposed interpretations, we cannot conclude that the term . . . is so clear and free from all ambiguity that we can attach one or the other meaning without reservation.

Id.
114. Id.
115. Id. at 765-66.
118. Gardner, 888 A.2d at 768 (Nigro J., concurring).
119. Chanceford, 923 A.2d at 1104.
120. Id.
121. Id.
122. 893 A.2d 70 (Pa. 2006).
123. Chanceford, 923 A.2d at 1104. When identifying the pertinent rules of statutory construction, the court stated: "[t]his Court . . . has recognized that the term shall is man-
the Pennsylvania Insurance Department Act\textsuperscript{124} permits a third party proof of claim to be withdrawn.\textsuperscript{125} To correctly interpret "shall" as mandatory or directory, the \textit{Koken} court cited to various past cases, including \textit{Oberneder} and \textit{Coretsky}.\textsuperscript{126} Noticeably missing from the list of precedents was the \textit{Gardner} rule—that "shall" by definition is ambiguous.\textsuperscript{127} Rejecting the argument of ambiguity in the statute, the court interpreted "shall" in accordance with its plain mandatory meaning.\textsuperscript{128}

The cases examined and cited by the court in \textit{Chanceford} express the general rule that "shall" denotes a mandate, except in situations where the context in which the word appears creates ambiguity.\textsuperscript{129} These cases also stand for the principle that a court, when interpreting a statute, must follow the guidelines established by the Statutory Construction Act, which provides for a close examination of statutory language and an inquiry into the legislature’s intent only if the language is ambiguous. The close adherence to this foundational groundwork shows that the \textit{Chanceford} court took the correct approach in construing the words of AZA.

In accordance with the approach of the prior cited cases, the court scrutinized the language of the act, individually examining the three sentences embodied in section 5912(a).\textsuperscript{130} After each sentence, the court explained the clear meaning of that statement.\textsuperscript{131} By taking the pertinent section line by line, the court dispelled the assertions that the language created ambiguity.

datory for purposes of statutory construction when a statute is unambiguous.” \textit{Id.} (citing \textit{Koken}, 893 A.2d at 81.).

\textsuperscript{124} 40 PA. STAT. ANN. §§ 221.1-222.63 (West 1999 & Supp. 2008). The statute in question states:

\textit{Whenever any third party asserts a cause of action against an insured of an insurer in liquidation the third party may file a claim with the liquidator. The filing of the claim shall operate as a release of the insured’s liability to the third party on that cause of action . . . .}

40 PA. STAT. ANN. § 221.40(a) (West 1999).

\textsuperscript{125} \textit{Koken}, 893 A.2d at 73.

\textsuperscript{126} \textit{Id.} at 81.

\textsuperscript{127} \textit{Id.} Furthermore, the court stated: "[i]t is only when the words of the statute are not explicit that the court should seek to determine the General Assembly’s intent through consideration of statutory construction factors." \textit{Id.} (citing 1 PA. CONS. STAT. ANN. § 1922(1) (West 2008)).

\textsuperscript{128} \textit{Koken}, 893 A.2d at 82. Explaining its determination of "shall," the majority wrote: "[w]here it is unambiguous, the plain language controls, and it cannot be ignored in pursuit of the statute’s alleged contrary spirit or purpose.” \textit{Id.}

\textsuperscript{129} \textit{Chanceford}, 923 A.2d at 1104.

\textsuperscript{130} \textit{Id.} at 1105.

\textsuperscript{131} \textit{Id.}
The first line of the section, with the use of the word “shall,” provides a clear mandate for the purpose of preventing the creation of airport hazards. The second sentence, featuring the word “may,” describes what may be included in an ordinance in compliance with AZA. Although the first sentence contained “shall,” while the second sentence stated “may,” the court found these provisions of AZA clear and free from ambiguity. While the first sentence orders a municipality to enact an airport hazard zoning ordinance, the second sentence prescribes ways in which that goal may be achieved. Thus, AZA permits Chanceford Township some discretion when adopting an airport hazard area ordinance. Although discretion may be used to decide what the ordinance may encompass, the third sentence of section 5912(a) reiterates that the hazard area ordinance must be adopted if an existing ordinance does not regulate land uses and heights on lands adjacent to a public airport.

Each of the five justices taking part in the Chanceford decision agreed that the commonwealth court erred in interpreting AZA’s use of “shall” as discretionary. While Justice Saylor filed a dissenting opinion, the basis of his opinion was his belief that the existing township ordinance complied with the act. Justice Say-
lor supported the majority's decision that AZA is mandatory, showing that the correct decision was reached.\textsuperscript{140}

The most striking aspect of this court's determination lies not in the holding itself, but in its consequences. Both the appellate brief of the Chanceford Township Board of Supervisors and the amicus curiae brief of the PSATS focus on the negative repercussions that a mandatory interpretation would bear.\textsuperscript{141} The Board of Supervisors argued that thousands of acres of privately owned land would be subjected to restrictions for the sole benefit of a five-acre airport functioning as a non-conforming use.\textsuperscript{142} Additionally, they asserted that these consequences would burden municipalities throughout the entire state.\textsuperscript{143} The trial testimony of a PennDOT expert revealed that approximately eighty percent of municipalities containing public airports did not have airport hazard zoning.\textsuperscript{144}

The Board of Supervisors and PSATS also argued that compelling the adoption of airport hazard zoning ordinances would bear constitutional repercussions in the form of de facto takings.\textsuperscript{145} If AZA mandated the adoption of an ordinance, the restrictions imposed would interfere with the use and enjoyment of private land, and force municipalities to compensate the affected landowners.\textsuperscript{146} Chanceford Aviation rebutted this assertion with its own public policy argument, contending the legislature intended to benefit the public by establishing the safety provisions embodied in AZA.\textsuperscript{147} Furthermore, the legislature decided that these benefits would be provided through public expense.\textsuperscript{148}

\textsuperscript{140} Id.
\textsuperscript{142} Brief of Appellee at 12, Chanceford, 923 A.2d 1099, 2005 WL 3862607.
\textsuperscript{143} Id.
\textsuperscript{144} Id.
\textsuperscript{145} Id. at 13. A "de facto taking" is defined as "interference with the use or value or marketability of land in anticipation of condemnation, depriving the owner of reasonable use and thereby triggering the obligation to pay just compensation." BLACK'S LAW DICTIONARY 1218 (8th ed. 2005).
\textsuperscript{146} Brief of Appellee at 13, Chanceford, 923 A.2d 1099, 2005 WL 3862607; Brief of Pa. State Ass'n of Twp. Supervisors as Amicus Curiae Supporting Appellee Township at 9-10, Chanceford, 923 A.2d 1099 (No. 2003-Su-003232-Y08). Several States have held that ordinances limiting building and tree heights on land adjacent to an airport constitute a regulatory taking and require just compensation under the Federal and State Constitutions. See McCarran Intern. Airport v. Sisolak, 137 P.3d 1110 (Nev. 2006).
\textsuperscript{147} Reply Brief of Appellants Chanceford Aviation at 2, Chanceford, 923 A.2d 1099 (No. 2003-SU-003232-Y06).
\textsuperscript{148} Id.
On appeal from the trial court, the commonwealth court clearly found persuasive the aforementioned negative consequences. In stating its holding, the court made direct reference to the repercussions, and expressly refused to find that the legislature could have intended such results. The question remains whether these consequences should have played a role in the supreme court's decision in this case.

Under the Statutory Construction Act, the intention of the legislature may be ascertained if the court determines that the words of the statute are unclear or ambiguous. If the court had focused on the possible negative consequences, this statutory guideline would have been ignored. Once the court determined that the language of AZA was clear and unambiguous, the court lacked the authority to give weight to the negative repercussions. Clear language, defined according to its common usage, is the best indication of legislative intent. Furthermore, the fact that a mere five-acre parcel of land will be benefited does not affect the clear language of AZA.

That the Chanceford case became a debate of public policy should not distract from the issue presented to the Supreme Court of Pennsylvania. The Chanceford Township Board of Supervisors did not pose a question challenging the constitutional validity of AZA. Rather, the question to be answered was one of statutory interpretation, requiring close adherence to the codified rules of the Statutory Construction Act. Although the holding may burden private landowners and municipalities throughout the State, the approach taken and ultimate conclusion correctly followed the long line of applicable precedent.

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150. Baublitz, 865 A.2d at 979. The court stated: "we cannot conclude that the legislature ... intended that the AZA mandate that the Township adopt a model airport hazard zoning ordinance that will result in a servitude being imposed on the properties of hundreds of landowners and thousands of acres ...." Id.
151. 1 PA. CONST. STAT. ANN. § 1921(c) (West 2008).
152. Chanceford, 923 A.2d at 1104 (citing Hannaberry HVAC v. Workers' Comp. Appeal Bd., 834 A.2d 524, 531 (Pa. 2003)).