

[REDACTED]

May 7, 2015

RECEIVED

MAY 11 2015

To: PA Office of Attorney General
From: [REDACTED]

**Office of Attorney General
Litigation Section**

Subject: ACRE Farm Ordinance Review

I am writing this letter on behalf of my client [REDACTED] who owns a farm in Woodward Township, Clinton County, PA to inform you that the township's zoning ordinance that was enacted on April 12, 2011 by Woodward Township, Clinton County is in direct violation of Pa Act 38 (Ch 83 Nutrient Management) and Ch 91 (Manure Management). The ordinance supersedes current state regulation and is a direct threat to the normal farming practices of existing and future farms in Woodward Township.

[REDACTED] owns and operates a crop and livestock operation, one of the farms (approx. 160ac) he owns is in Woodward Township where he built a 60' x 116' Barn. After constructing the barn he conveyed to the township that he was going to put some finishing pigs and cattle into the barn they responded telling him that he could not do that unless they were for personal use.

The farm is located in the townships Rural Center District. The definition of the Rural Center District is attached. In Rural Center District land cultivation is allowed and a special exception is required for raising livestock or poultry for personal use. Section 521.A.2 Agricultural Uses only allows commercial animal husbandry in Agricultural and Woodland Conservation Districts. So essentially this zoning ordinance is allowing growing of crops and produce but not of livestock or poultry which is in conflict of the normal farming practices as set forth in Pa Act 38 and Ch 91.

Enclosed you will find a copy of the township zoning ordinance and please feel free to contact me with any further questions.

Sincerely,

[REDACTED]

Enclosed: Woodward Township Zoning Ordinance

CC: [REDACTED]

[REDACTED]

METTE, EVANS & WOODSIDE
ATTORNEYS AT LAW

November 29, 2016

Robert A. Willig, Esquire
Senior Deputy Attorney General
Office of the Attorney General
564 Forbes Ave.
Pittsburgh, PA 15219

VIA REGULAR U.S. MAIL and EMAIL AT

**Re: REQUEST FOR REVIEW PURSUANT TO THE PENNSYLVANIA
AGRICULTURE, COMMUNITIES and RURAL ENVIRONMENTS
(ACRE) ACT, 3 Pa. C.S. §§311-318**

Dear Mr. Willig:

I am writing this letter on behalf of my client [REDACTED] pursuant to Section 314 (a) of the Pennsylvania ACRE Act, 3 Pa. C.S. §311 et seq. ("ACRE") requesting that the Office of the Pennsylvania Attorney General review Woodward Township, Clinton County (the "Township") Zoning Ordinance Section 521(A)(4). I believe you already have a copy of the Zoning Ordinance in its entirety. Nevertheless, a copy of Section 521 of the Township's Zoning Ordinance is attached hereto and marked Exhibit 'A' for your reference.

BACKGROUND

As you know, this matter is the second request [REDACTED] as made to your office for a decision on Woodward Township's Zoning Ordinance. By way of background [REDACTED] is the owner of a 60+-acre farm located in the Township's Rural Center Zoning District (the "Farm Property"). [REDACTED] purchased the Farm Property by deed dated July 2, 2013. For approximately twenty (20) years prior to his purchase of the Farm Property [REDACTED] farmed the property pursuant to a lease with the prior owner. During that period, he frequently spread manure on the Farm Property. The current Zoning Ordinance became effective on April 17, 2011. [REDACTED] submits that the Farm Property and surrounding area has historically been agricultural.

At all times prior to November of 2014 the Farm Property was improved with a barn. The barn was old and in disrepair. On November 11, 2014 [REDACTED] applied for a permit from the Township pursuant to which he disclosed that he intended to raze the existing barn and rebuild a new barn in its place. The Township's Zoning Officer granted [REDACTED] permit on November 14, 2014. Accordingly [REDACTED] razed the existing barn and began construction of a new barn in November of 2014.

The barn constructed by [REDACTED] was specifically built to house pigs. The floor of the barn is slatted to allow pig manure to fall into a storage area situated directly below the barn. From there it is collected and disposed of in accordance with applicable law.

November 29, 2016

Page 2

On or about January 21, 2015, an article ran in a local newspaper indicating that several residents voiced complaints about [REDACTED] proposed plan to use the barn and the Farm Property to raise pigs. By letter dated February 17, 2015, [REDACTED] prior counsel wrote the Township's solicitor confirming that [REDACTED] did intend to use the Farm Property to raise pigs, but that [REDACTED] did not intend to establish a Concentrated Animal Operation ("COA") or Concentrated Animal Feeding Operation ("CAFO") as Township residents seemed to believe. The Township took no action to revoke the permit that [REDACTED] had obtained and construction on the barn continued. On May 11, 2015, [REDACTED] submitted a request to your office for a determination under ACRE as to the legality of the Township Zoning Ordinance's distinction between crop farming and the raising of livestock in the Township's Rural Center District.

On or about March 18, 2016, [REDACTED] had piglets delivered to the new barn. By letter dated March 18, 2016, the Township's Zoning Officer advised [REDACTED] that the commercial raising of livestock in the Rural Center District was prohibited. After further discussions on the issue between counsel, the Township issued a Notice of Violation directing [REDACTED] to immediately cease and desist from using the barn to house livestock.

On March 31, 2016, the Township filed a Complaint for Injunction and a Motion for Preliminary Injunction requesting the Court of Common Pleas of Clinton County to issue an injunction prohibiting [REDACTED] from maintaining livestock in the barn. This case was docketed at Clinton County Docket No. 442-2016-CV. The basis for this request was that Section 403 of the Zoning Ordinance prohibits the commercial raising of livestock or poultry in the Rural Center District. By Order dated May 5, 2016, the Court directed [REDACTED] to cease and desist from utilizing the barn to raise and sell commercial livestock. [REDACTED] filed a Motion for Reconsideration asserting that the Court of Common Pleas lacked jurisdiction over the matter because no final adjudication had been made by the Township's Zoning Hearing Board. After further proceedings, the Township voluntarily withdrew its action on May 20, 2016.

On May 18, 2016, the Township issued a second Notice of Violation, and simultaneously with its withdrawal of the action pending at Clinton County Docket No. 442-2016-CV on May 20, 2016, the Township filed a second Complaint for Injunction and a second Motion for Preliminary Injunction against [REDACTED] again contending, *inter alia*, that livestock operations are prohibited in the Rural Center District. This second action was docketed at Clinton County Docket No. 682-2016. [REDACTED] timely appealed the May 18, 2016 Notice of Violation to the Township's Zoning Hearing Board contending, *inter alia*, that the Zoning Ordinance violated ACRE. The parties entered into a stipulation pursuant to which the Township agreed to withdraw the matter pending at 682-2016-CV if your office opined that the distinction as to uses in the Rural Center District is, in fact, a violation of ACRE. On August 25, 2016, you issued an opinion concluding that the Zoning Ordinance's prohibition of the commercial raising of livestock while permitting commercial crop farming in the Rural Center District is a violation of ACRE.

On August 5, 2016, shortly before your opinion, the Township issued a third Notice of Violation on a different theory. In the August 5, 2016 Notice of Violation, the Township contends that [REDACTED] usage of the barn to house piglets is a violation of Section 521(A)(4) of the Zoning Ordinance. Section 521(A)(4) provides that buildings in which livestock or poultry are to be housed (temporarily or permanently) must be setback at least one hundred (100') feet from all property lines and no less than twenty-five (25') feet from the right-of-way of a public street. A true and correct copy of the August 5, 2016 Notice of Violation is attached hereto and marked Exhibit 'B' for your reference. The restriction contained in Section 521(A)(4) applies to all buildings housing livestock within the Township regardless of the zoning district. The Township contends that [REDACTED] barn is fifty-five (55') feet from a neighboring property. [REDACTED] timely filed an appeal from the August 5, 2016 Zoning Ordinance contending, *inter alia*, that Section 521(A)(4) of the Zoning Ordinance violates ACRE. A true and correct copy of [REDACTED] appeal to the Zoning Hearing Board is attached hereto and marked Exhibit 'C'. Once again, the parties have agreed to await a determination from your office as to the legality of Section 521(A)(4) of the Township's Zoning Ordinance before proceeding further.

GRAND'S LEGAL POSITION

[REDACTED] submits that the same logic set forth in your letter dated August 25, 2016 applies to the Township's attempt to differentiate between buildings housing livestock and all other types of buildings. Section 313(a) of ACRE prohibits a local government unit from adopting or enforcing an unauthorized local ordinance. Section 312 defines an "unauthorized local ordinance" in relevant part as an ordinance that "prohibits or limits a normal agricultural operation unless the local government: (a) has expressed or implied authority under State law to adopt the ordinance; and (b) is not prohibited or preempted under State law from adopting the ordinance." As correctly recognized in your August 25, 2016 letter, "There is no doubt that the growing of crops and the housing of livestock are normal agricultural operations." Moreover, the Farm Property is not less than 10 contiguous acres. Without question, ACRE applies to the [REDACTED] agricultural operation. Section 521(A)(4) limits the placement of [REDACTED] building, which is used in that normal agricultural operation. Because ACRE prohibits a municipality from limiting a normal agricultural operation and [REDACTED] operation is a normal agricultural operation that is limited by Section 521(A)(4), the Township's ordinance is prohibited by ACRE.

Moreover, the Township's authority to enact zoning ordinances is set forth in the Municipalities Planning Code (the "MPC"). One of the purposes of the MPC is "to ensure that municipalities enact zoning ordinances that facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impeded the owner or operator's need to change or expand their operations in the future in order to remain viable." 53 P.S. §10505. The Township's power to regulate agricultural operations is specifically and significantly circumscribed by Sections 10603(b) and 10603(h) of the MPC. Section 10630(b) permits local governments to permit, prohibit and regulate land uses "except to the extent... that regulation of activities related to commercial agricultural production exceed the Nutrient Management Act, 3 Pa C.S. §501 *et seq.*, regardless of whether any agricultural operation would

November 29, 2016

Page 4

be a concentrated animal operation as defined by the "Nutrient Management Act[.]" Section 10603(h) provides that zoning ordinances shall encourage continuity, development and viability of agricultural operations and prohibits local governments from enacting ordinances that "restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct adverse effect on the public health and safety." 53 P.S. §10603(h).

On its face, Section 521(A)(4) limits the farmer's ability to construct buildings housing livestock, a normal agricultural operation, in all zoning districts within the Township without any regard to the character of the community or the size of the landowner's property. This prohibition is a regulation of "activities related to commercial agricultural production" and exceeds the requirements of the Nutrient Management Act. As you previously recognized, [REDACTED] operation does not meet the definition of a CAO or CAFO. COAs and CAFOs are required to implement nutrient management plans that comply with setback requirements set forth in 25 Pa. Code §83.351(a). Because his operation does not constitute a CAO or CAFO, under Pennsylvania law [REDACTED] compliance with the Nutrient Management Act is purely voluntary. *Com., Office of Atty Gen. ex rel Corbett v. Locust Twp.*, 49 A.3d 502, 511 (Pa. Commw. 2012). Section 521(A)(4) applies to all buildings housing livestock regardless of the size of the agricultural operation. In effect, the Township is requiring [REDACTED] to comply with setback requirements from which he has been specifically exempted by the General Assembly. The Commonwealth Court has consistently rejected municipal attempts to impose set back requirements on "farming operations that the General Assembly has deemed to be so small as to justify their exclusion from the lesser NMA regulations..." *Locust Twp. supra* at 512; See also *Com. v. Richmond Twp.*, 2 A.3d 678 (Pa. Commw. 2010).

Zoning laws are enacted under the police power and in the interest of public health, safety, and welfare. *Gulla v. North Strabane Twp.*, 676 A.2d 709 (Pa. Commw. 1996) citing *In re, Michener Appeal*, 115 A.2d 367 (Pa. 1955). In *Com., Office of Atty General ex rel. Corbett v. Richmond Township*, 975 A.2d 607 (Pa. Commw. 2009), the Commonwealth Court specifically acknowledged that the General Assembly has implicitly determined that an agricultural operation complying with the Nutrient Management Act, the Right to Farm Law, and the Agricultural Area Security Law does not constitute an operation that has a direct adverse effect on the public health and safety. *Id.* at 616, fn. 13. Accordingly, the Township's unilateral decision to enact an ordinance that restricts [REDACTED] agricultural operation is not a valid exercise of the Township's police power as a matter of law.

November 29, 2016
Page 5

REQUEST

For the reasons set forth herein [REDACTED] requests a determination from the Attorney General's Office that Section 521(A)(4) of the Woodward Township's Zoning Ordinance is invalid. If you have any questions or concern, or if you need any additional information to assist you in analyzing this matter, please do not hesitate to contact me.

Very truly yours,

[REDACTED]
[REDACTED]
[REDACTED]

RLF/jls
Enclosure
cc: [REDACTED]