

Kozloff Stoudt Attorneys

April 27, 2018

E-mail Address:
jmuir@kozloffstoudt.com

Via Email and First Class Mail

Robert A. Willig, Esquire
Senior Deputy Attorney General
Office of Attorney General
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Re: ACRE Complaint - Oley Township
Our File No. 207887-048

Dear Deputy Willig:

I represent the Oley Township Municipal Authority (hereinafter "OTMA"). Your letter to the Oley Township Board of Supervisors (hereinafter "Township") has been provided to me for the preparation of a written response to your letter and the allegations raised by [REDACTED]. As the allegations in the written complaint relate to the Well Head Protection Program adopted for the benefit of OTMA and its well sources, the Township and OTMA agree that it is appropriate for OTMA to respond to the allegations.

[REDACTED] and his family are long-time residents of the Oley Valley and he has attended both OTMA and Township meetings on multiple occasions over the past few years on the subject of his complaint. As [REDACTED] states in his written complaint, he is very familiar with the zoning ordinances in Oley Township as his former company served as the Township Engineer for many years. [REDACTED] complaint fails to mention that he was a principal at LTL Consultants LTD which has served as the township engineer for many years. I would also note that his former company still serves as the Township Engineer today and it also served as the township engineer at the time of the subject ordinances were approved by the Township in 2011 and 2013.

The OTMA is required to protect its well heads. OTMA currently operates four (4) water wells which provide water to the various residents and customers of the OTMA. As set forth in the documents provided to you by [REDACTED] a very small portion of his property is located within Zone 1 of the Well Head Protection Program. I would note that many of the documents and letters he provided reference his father, the late [REDACTED] [REDACTED] the prior owner of the subject property. However, I would also note that [REDACTED]

Kozloff Stoudt, Professional Corporation

2640 Westview Drive | Wyomissing, PA 19610 | Tel 610.670.2552 | Fax 610.670.2591 | Web kozloffstoudt.com

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[REDACTED] was the primary contact for nearly all of my communications with him even prior to his father's passing in 2015.

By way of background, there are two (2) areas in which the property owned by [REDACTED] is within Zone I. As to Well No. 2, the area impacted by the Well Head Protection Program is 0.646 acres. As to Well No. 3, the area impacted by the Well Head Protection program is 0.255 acres. As set forth in the Ordinance, the Zone I protection under the Well Head Protection Program is a radius of 180 feet for Well No. 2 and a radius of 120 feet for Well No. 3. This Well Head Protection Program is the result of a DEP paid study for the entire cost for the Source Water Protection Plan which produced a substantial report analyzing the geology and recharge zones for each well. Another part of the analysis was the creation of a steady state groundwater flow model to delineate the protection zones for Oley's four water sources.

The Township Ordinance does not prohibit farming within Zone 1. Section 4 of the subject ordinance "Permitted Uses and Structures within the Well Head Protection Zones", sets forth various permitted uses and prohibited items in the two (2) Zones. Section 4(B) provides, "the following uses, where otherwise permitted by the underlying Zoning District, will be prohibited or permitted only by Special Exception within Zone I and Zone II, as applicable." Section 4(B)(4) states, "Land application of wastewater and waste sludge, manure, fertilizers, herbicides and pesticides, incidental and accessory to an agricultural, horticultural or forestry use, as permitted in an underlying District: Zone I - Prohibited. Zone II - as permitted in the underlying District with a Nutrient/Manure Management Plan in place."

As a result of the necessary and required Well Head Protection Program, the Township Ordinance prohibits application of wastewater and waste sludge, manure, fertilizers, herbicides and pesticides in Zone I, it does not prohibit all farming. The Well Head Protection Program does not restrict any and all uses of the property. The Well Head Protection Program only restricts items as set forth in the Township Ordinance that was provided to you.

Respectfully, [REDACTED] complaint to the Attorney General's Office is not really about the Township Ordinance and whether or not the Township Ordinance should be found invalid or should be preempted by the Right to Farm Law, Act of June 10, 1982, P.L. 454, as amended, 3 P.S. Sections 951-957. His complaint is really about his dissatisfaction with the compensation proposal offered by OTMA to his father a few years ago for the easement or protective covenant. He has repeatedly expressed financial dissatisfaction with the proposals submitted by OTMA to his father several years ago and/or the calculation of

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land area for development and the inclusion of easement area, not the validity of the Well Head Protection Program. I would further note that all financial conversations with [REDACTED] [REDACTED] have been through the OTMA - not the Township. Clearly, the Well Head Protection Program does not impact all possible uses for the subject property.

Section 1428 of the Federal Safe Drinking Water Act Amendments of 1986 requires all states to establish Well Head Protection Programs to protect groundwater from contamination. In Pennsylvania, the responsibilities for development and implementation of Well Head Protection Programs are shared between water suppliers (such as OTMA), the Commonwealth and local municipal governments. The Pennsylvania Department of Environmental Protection (DEP) recognizes that, in Pennsylvania, DEP is responsible for regulating water suppliers and discharges of contaminants. DEP also recognizes that it is the responsibility of local governments to regulate land use.

As your office is well aware, OTMA is required by the DEP to protect the well heads which provide water to over a thousand Oley Township residents.

Finally, as [REDACTED] acknowledges in his complaint, there are remedies at law available to [REDACTED] should he be dissatisfied with the financial compensation offered to his father previously.

If you need any additional information from the Township or OTMA, please do not hesitate to contact me.

Very truly yours,

KOZLOFF STOUDT
Professional Corporation


John E. Muir

JEM:aa

cc: David L. Allebach, Esquire, Solicitor to Oley Township
Shirley Moyer, Oley Township Secretary