



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

July 5, 2012

LINDA L. KELLY
ATTORNEY GENERAL

Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120

West Fallowfield Township Supervisors
3095 Limestone Road, Suite 1
Cochranville, PA 19330

RE: West Fallowfield Township Zoning Ordinance

Dear Board of Supervisors:

As you may recall, in February 2010, we informed West Fallowfield Township that we received a request from [REDACTED] to review the West Fallowfield Township Zoning Ordinance provisions regarding the number of animals that can be kept on a property pursuant to Act 38 of 2005 (ACRE). The animals at issue are four deer [REDACTED] kept on his property in a fenced area. On June 8, 2010, we informed the Township that our Office would not file a lawsuit based on our review.

Subsequently, [REDACTED] submitted additional information and requested that our Office reconsider the denial of his ACRE request for review. We have reviewed this additional information and consulted with the Pennsylvania Department of Agriculture (PDA). Based upon our review, we have granted [REDACTED] request for reconsideration because it appears that the Township's application of its Ordinance to prohibit the keeping of deer on [REDACTED] property unlawfully prohibits or limits a normal agricultural operation in violation of Act 38.

In order to expedite a resolution to this matter, we provide the Township with the following summary of our legal analysis in reaching the decision to accept this ACRE review.

[REDACTED] owns a 3.5 acre property in the Township's Rural Residential zone. On this property, he operates a farm stand, produces crops on one acre, and raises and breeds four deer. [REDACTED] holds a Cervidae Livestock Operation (CLO) license issued by the PDA for the keeping of the deer on his property. 3 Pa. C.S. § 2380.2. A CLO is defined and recognized under State law as a normal agricultural operation. Id. § 2380.1. Although [REDACTED]'s property is less than 10 acres, he has an anticipated yearly gross income of at least \$10,000 from the crops produced on-site and the sale of deer offspring, thus his operation is a normal agricultural operation under the Right to Farm Act. 3 P.S. § 952.

West Fallowfield Township Supervisors
July 5, 2012
Page 2

In the Township's Rural Residential zone, agriculture is a use permitted by right. [REDACTED] is engaged in an agricultural use on his property that is a normal agricultural operation under State law. On November 19, 2009, the Township issued a notice of violation to [REDACTED] stating the he was not permitted to keep the four deer on his property pursuant to Section 1302.F.2 of the Ordinance. However, Section 1302.F.2 addresses only "accessory residential use requirements" and not agricultural use requirements. Specifically, Section 1302.F.2 regulates the keeping of animals for "non-farming uses." The Township's application of residential use requirements on [REDACTED]'s normal agricultural operation violates ACRE. 3 Pa. C.S. § 312, 313. The Township does not have authority to preclude a normal agricultural operation in a zone where agriculture is a permitted use. 3 Pa. C.S. § 2389; 53 P.S. §§ 10603(b), (h).

We are prepared to bring legal action against the Township pursuant to Section 315 of Act 38 to invalidate or enjoin the enforcement of Section 1302.F.2. Before doing so, however, we write to offer the Township an opportunity to resolve the legal problem with its enforcement of the ordinance. We propose simply that the Township recognize that [REDACTED] is engaged in a normal agricultural operation and is permitted to keep the four deer on his property pursuant to his Cervidae Livestock Operation license. No ordinance amendments are required if the Township agrees to apply its ordinance lawfully.

Sincerely,



SUSAN L. BUCKNUM
Senior Deputy Attorney General

SLB/lis

cc: [REDACTED]