



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

July 28, 2006

TOM CORBETT
ATTORNEY GENERAL

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

James R. Nanovic, Esquire
Nanovic Law Offices
57 Broadway
P.O. Box 359
Jim Thorpe, PA 18229-0359

Re: Lower Towamensing Ordinance of 1978

Dear Attorney Nanovic:

As a follow-up to our meeting on June 7, 2006, I am writing to detail the legal problems with the Lower Towamensing Ordinance of 1978. As you know, Act 38 of 2005, 3 P.S. §§ 311-318, prohibits a municipality from adopting or enforcing a local ordinance that prohibits or limits a normal agricultural operation, as defined by the Right to Farm Act, 3 P.S. §§ 951-957, unless the ordinance is authorized and not preempted by state law.

Section 432(5)(a) of the Ordinance prohibits what the Township defines as "intensive agriculture". The experts we consulted at the Penn State School of Agricultural Sciences have advised that "intensive agriculture" is not a term recognized in agriculture and that, as defined in Section 201 of the Ordinance, it embraces normal agricultural operations. The prohibition of intensive agriculture is not authorized by state law, and is contrary to the clear public policy of protecting normal agricultural operations articulated in Act 38, the Right to Farm Act, and the Municipalities Planning Code, 53 P.S. § 10603(h).

Section 432(5)(b) is preempted by the Nutrient Management Act (NMA), 3 Pa C.S. §§ 501-522. The setback provision of Section 432(5)(b) conflicts with and is more stringent than the various 100, 200 and 300 foot setback requirements contained in the NMA regulations, 25 Pa. Code § 83.351.

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We anticipate filing a lawsuit in late August unless the Township, before then, commits to repeal Sections 201¹ and 432(5)(a) and (b) of the Ordinance. We remain available to meet, and will consider any alternative proposal by the Township to resolve this matter without litigation, provided the proposal fully and specifically addresses the legal problems we have identified, and is delivered to us on or before August 25, 2006.

Sincerely,



MICHAEL T. KILLION
Deputy Attorney General

cc: Louis J. Rovelli, Executive Deputy Attorney General
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¹ Definition of Intensive Agriculture