



COMMONWEALTH OF PENNSYLVANIA
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August 27, 2007

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Brett O. Feese, Esquire
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RE: Lewis Township and Turbotville Borough Joint Municipal Zoning Ordinance

Dear Mr. Feese:

This will respond to your letter of July 17, 2007, requesting details on what provisions of the Lewis Township and Turbotville Borough Joint Municipal Zoning Ordinance violate Act 38.

Section 201 of the Ordinance defines agriculture to exclude "concentrated animal operations." This conflicts with and is preempted by the Nutrient Management Act (NMA), 3 Pa. C.S. § 501, *et seq.*, and State Conservation Commission (SCC) regulations, which define and regulate concentrated animal operations as a normal agricultural operation. The exclusion of concentrated animal operations from the definition of 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 (3 P.S. § 951, *et seq.*), the Municipalities Planning Code (53 P.S. § 10107, 10603(h)), and the Agricultural Area Security Law (35 P.S. § 901, *et seq.*).

Section 407 prohibits concentrated animal operations in the Agricultural-Preservation District (AP) by employing Section 201's definition of agriculture. As stated, the NMA and its accompanying SCC regulations preempt local ordinances that attempt to prohibit the agricultural practices regulated by the NMA. 3 Pa. C.S. § 519; 25 Pa. Code § 82.205.

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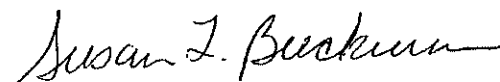
Section 407(F)(1) and (H)(4)(a) set a 25 acre minimum net or gross lot size for agriculture. This conflicts with the Right to Farm Act, which defines a normal agricultural operation as a farm of 10 or more contiguous acres, or of less than 10 contiguous acres if the farm has an anticipated yearly gross income of at least \$10,000. Section 407(b)-(c) sets forth general width and setback requirements for an agricultural lot that may conflict with agricultural protections under state law.

Section 408 covers the requirements for the Agricultural-Transition District (AT). However, the Ordinance does not state an intent or purpose for designating an AT District, as distinguished from the AP or Agricultural/Residential (AR) districts. Section 408(A)(2)(g)(1) allows for concentrated animal operations, but states that a concentrated animal operation is "[n]ot to exceed two (2) Animal Equivalency Units (AEU's) per acre." This conflicts with and is preempted by the NMA and its accompanying SCC regulations that define a concentrated animal operation as an agricultural operation "where the animal density exceeds two AEU's per acre on an annualized basis." 25 Pa. Code § 83.201.

Moreover, Section 408(A)(2)(g)(1) incorporates Appendix 1 setting forth an Animal Equivalent Unit (AEU) Formula that conflicts with and is more stringent than the SCC regulation defining suitable land for the AEU formula, because Section 408 only includes cropland and pastures within 10 miles of the farm as the acres available for manure. 25 Pa. Code § 83.262(a)(2). Section 408(C)(3) also sets a 25 acre minimum lot size for agriculture, which, as stated above, violates the Right to Farm Act. Section 408(C)(3)(b)-(c) sets forth general width and setback requirements for an agricultural lot that may conflict with agricultural protections under state law. Section 408(D)(4)(b) is preempted by the NMA and SCC regulations. The setback provisions of Section 408(D)(4)(b) conflict with and are more stringent than the various 100, 200, and 300 foot setback requirements contained in the NMA regulations. 25 Pa. Code 83.351.

At this time, these are the legal problems with the Ordinance that we have identified, we will notify you if there are any additional legal problems in our continuing review of the Ordinance. We are available to meet, and will consider any alternative proposal submitted by the Township and Borough to resolve this matter, provided the proposal fully and specifically addresses the legal problems we have identified.

Sincerely,



Susan L. Bucknum
Senior Deputy Attorney General

SLB/
cc: Turbotville Borough Council