



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

February 29, 2008

TOM CORBETT  
ATTORNEY GENERAL

Litigation Section  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120



Township Supervisors  
TOWNSHIP OF SALEM  
38 Bomboy Lane  
P.O. Box 405  
Berwick, PA 18603

RE: Salem Township Zoning Ordinance

Dear Township Supervisors:

As you are aware, we received an Act 38 request for review of the Animal Control Ordinance of Salem Township from [REDACTED]. Specifically, [REDACTED] requested that we review the Township's Ordinance Number 06-02, Section VII.B., which provides that, in areas outside of a residential area, it is a violation for "anyone to possess or have in their control, to allow or permit any farm animal to be kept within two hundred (200) feet of any approved land of another or within two hundred (200) feet of any water well which is used for residential use." [REDACTED] was cited for violating this provision on October 5, 2006.

[REDACTED] operates a dairy farm and has done so continuously since 2001. In addition, [REDACTED] has implemented a manure storage facility into his normal agricultural operation. In order to implement the manure storage facility, [REDACTED] was required to obtain an approved nutrient management plan from the State Conservation Commission pursuant to the Nutrient Management Act, 3 Pa. C.S. § 501, et seq. [REDACTED]'s nutrient management plan directs him to pasture his cows in a rotational grazing system to accomplish the State approved nutrient management goals for his farm. The rotational grazing system includes the field areas within two hundred feet of [REDACTED]'s property lines.

The Right to Farm Act provides, in part, that:

No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations, or if the

February 29, 2008

Page 2

physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has either: (1) been in operation for one year or more prior to the date of bringing such action, or (2) *been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation.*

3 P.S. § 952(a) (emphasis added).

Nutrient management regulations, which require nutrient management plans to prescribe pasture grazing systems if applicable to the management of nutrients on the operation, 25 Pa. Code § 83.293(c); 82.294(j), preempt local ordinances that conflict with the practices regulated by the Act.

Section VII.B. of the ordinance is in conflict with the Right to Farm Act and the Nutrient Management Act unless it is amended to recognize that a normal agricultural operation with a nutrient management plan directing a rotational grazing system is not subject to the setback requirements contained in Section VII.B.

Please contact me at your earliest convenience to discuss resolving the legal problems with Ordinance Number 06-02.

Sincerely,



**SUSAN L. BUCKNUM**  
Senior Deputy Attorney General

SLB/

cc: 