



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
HARRISBURG, PA 17120

July 29, 2015

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ATTORNEY GENERAL

Litigation Section  
15<sup>th</sup> Floor, Strawberry Square  
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Union Township Board of Supervisors  
255 Pine Grove Road  
Hanover, PA 17331

RE: [REDACTED]  
ACRE Review Request  
Union Township, Adams County

Dear Township Supervisors:

As you know, the Office of the Attorney General received a request from Jack M. Hartman, Esquire, on behalf of his clients, [REDACTED] for review of Union Township's application of its zoning ordinance to limit the [REDACTED] retail sales of alpaca products produced through their alpaca farm operation. It appears from our review that the Township's application of its zoning ordinance to the Wysongs' operations unlawfully prohibits or limits a normal agricultural operation in violation of ACRE.

We are prepared to bring legal action against the Township pursuant to Section 315 of Act 38 to invalidate or enjoin the enforcement of the Ordinance provisions. Before doing so, however, we write to offer the Township an opportunity to provide relevant information or materials and to meet with us to discuss the matter.

In an effort to start negotiations to resolve this matter, we will detail the legal problems with the Township's application of the zoning ordinance to the [REDACTED] operation. We will propose changes to the Ordinance and its application that would be acceptable to the Office of Attorney General to resolve this matter by agreement.

## I. BACKGROUND

The [REDACTED] own and operate an alpaca farm in the agricultural zoning district in Union Township, Adams County. The alpaca fiber produced on their farm is processed in one of three ways: (1) fiber remains on farm for processing; (2) fiber is sent to a "mini-mill" to be processed into yarn that is 100% from their alpaca fiber; and (3) fiber is sent to an alpaca cooperative that

comingles the fiber with other alpaca fibers and processes the combined fibers into either yarn or products such as socks, scarfs, hats, and gloves. The mini-mill and cooperative return yarn and products to the [REDACTED] in an amount commensurate to the amount of fiber sent in to be processed.

The [REDACTED] want to engage in direct commercial sales of alpaca fiber, yarn, and products produced through all three of these processing methods in a segregated portion of their home on the farm. In addition, the [REDACTED] want to sell alpaca products, such as coats, sweaters, and blankets, which are made in Peru. The [REDACTED] sought approval from the Township to engage in these direct commercial sales and were directed to submit the request to the zoning hearing board.

## II. UNION TOWNSHIP'S APPLICATION OF ITS ZONING ORDINANCE

The Township's zoning hearing board held a hearing on the [REDACTED] request to engage in direct commercial sales of the alpaca products. The Board opined that the principal issue was whether the [REDACTED] proposed retail sales of alpaca products was a "farm-related business" as set forth in the ordinance.

The ordinance defines a "farm-related business" as: "[a] business accessory to and operated on a farm." Ordinance § 202. A "farm-related business" is a permitted accessory use in the agricultural district. Ordinance § 502(C)(4). Section 722 sets forth the requirements for a "farm-related business" as follows:

- A. Not more than two (2) farm-related occupations per farm shall be permitted.
- B. Not more than a total of 2400 square feet of structure floor area shall be utilized for all farm-related businesses. Such space shall be physically partitioned from the principal use or other accessory uses.
- C. Not more than 600 square feet of total outdoor display space for all farm-related businesses shall be permitted. Outdoor display shall be limited to daylight hours and must be removed after dusk.
- D. Not more than one (1) person other than residents of the farm shall be employed.

The Board opined that a "retail store as a 'farm-related business' must be limited to the sale of items produced on the Property." Union Twp. ZHB 09/14/2015 Decision at 7. With respect to the [REDACTED] proposal, the Board stated that retail sales would be "limited to the sale of alpaca yarn and items produced at the Property with alpaca wool grown at the Property." Id. Accordingly, the Board approved the [REDACTED] to use their property only for "retail sales of alpaca yarn produced solely on the Applicants' property and retail sales of products which are wholly produced on the Applicants' property with alpaca fiber produced either in whole or in

part on the property as a farm related business accessory to Applicants' farming operation." Id. at 11.

### **III. ACRE AND THE RIGHT TO FARM ACT**

ACRE protects normal agricultural operations from unauthorized local ordinances. An unauthorized local ordinance is an ordinance that is enacted or enforced by a local government unit that prohibits or limits a normal agricultural operation in violation of State law. 3 Pa. C.S. § 312. ACRE incorporates the Right to Farm Act's (RTFA) definition for normal agricultural operation into the statute. Id.

A normal agricultural operation includes the "activities, practices, equipment and procedures that farmers adopt, use or engage in . . . the production, harvesting and preparation for market or use of agricultural . . . commodities." 3 P.S. § 952. This includes "new activities, practices, equipment and procedures consistent with technological development within the agricultural industry." Id. An agricultural commodity is defined to include "ranch-raised fur-bearing animals and the products of ranch-raised fur-bearing animals." Id.

The experts we consulted at the Pennsylvania Department of Agriculture and the PSU College of Agricultural Sciences have advised us that it is part of normal agricultural operations for a farmer to send raw agricultural commodities off-site for further processing and to bring the final product back to the farm for retail sale. More specifically, the processing methods used by the [REDACTED] to prepare the alpaca fiber they produce for market or use are accepted and normal practices in the alpaca agricultural industry due to the complexity, cost, time and resources required to process alpaca fiber.

The RTFA protects a farmer's ability to engage in direct commercial sales of agricultural commodities on the farm. The Act provides that:

Direct commercial sales of agricultural commodities upon property owned and operated by a landowner who produces not less than 50% of the commodities sold shall be authorized, notwithstanding municipal ordinance, public nuisance or zoning prohibitions. Such direct sales shall be authorized without regard to the 50% limitation under circumstances of crop failure due to reasons beyond the control of the landowner.

3 P.S. § 953(b); See Commonwealth v. Richmond Township, 2 A.3d 678, 687 & n.11 (explaining that section 603(h) of the MPC "indicates that, as a matter of law, an agricultural operation complying with the NMA, AASL and the RFL does not constitute an operation that has a direct adverse effect on the public health and safety").

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The [REDACTED] have provided our Office with information substantiating that at least 48% of their sales are from products derived from fiber produced on their farm and 29% are from products produced through an alpaca cooperative with the [REDACTED] fiber produced on their farm that is co-mingled with other alpaca fibers. The remaining 23% of sales are from products purchased for retail sales that are not made with the [REDACTED] alpaca fibers. Our experts have opined that the [REDACTED] processing methods for the alpaca fiber they produce and the resultant products satisfy the RTFA's 50% minimum production of agricultural commodities sold to engage in direct commercial sales on their property. Thus, the [REDACTED] may sell alpaca products produced by the three processing methods, as well as those they purchase from Peru for retail sale.

**IV. CONCLUSION**

For these reasons, the Township's interpretation of its ordinance provision regulating "farm-related business" to require that the [REDACTED] may only engage in retail sales of alpaca yarn and products produced solely on their farm violates the RTFA's protection of direct commercial sales of agricultural commodities. The legal problems with the restrictions on direct commercial sales can be corrected if the Township amends the Ordinance by adding a subsection to Section 722 to state: "Direct commercial sales of agricultural commodities are permitted as provided under the Right to Farm Act, 3 P.S. § 953(b)."

We look forward to the Township's response to our proposal to resolve this matter through amending the Ordinance. We request that the Township suspend its enforcement/interpretation of the ordinance provision at issue pending resolution through ordinance amendment and allow the [REDACTED] to move forward with their direct commercial sales of alpaca products in the manner set forth above.

Sincerely,



**SUSAN L. BUCKNUM**  
**Attorney-in-Charge — ACRE Program**  
**Senior Deputy Attorney General**

**SLB/kmag**

**cc: Jack M. Hartman**