



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

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April 12, 2017

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[REDACTED]

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[REDACTED]

Re: *ACRE Review Request* – [REDACTED]
Woodward Township-Clinton County

Dear Ladies and Gentlemen,

I write for two reasons.

Normal Agricultural Operation

By letter dated August 25, 2016, I informed the Township that it could not allow one form of a normal agricultural operation (NAO), crop farming, in a zoning district while prohibiting another type of NAO, swine operations, in the same district. I outlined in that letter what the Township had to do to make its ordinances comply with state law. I wrote to Mr. O'Connor on September 22, 2016 inquiring about the Township's position on the matter. On October 28, 2016 Mr. O'Connor and I discussed how to resolve the unauthorized ordinances. My first reason for writing is to inquire whether the changes to the ordinances that I recommended in my August 25, 2016 letter have been implemented.

Setback

My second reason for writing is to discuss subsequent developments in the case. I have learned that Woodward Township now contends that the [REDACTED] use of a barn to house the piglets violates Part 5, SUPPLEMENTARY USE REGULATIONS, § 521(A)(4), AGRICULTURAL USES, General Agricultural Use Regulations. This section states that “[b]uildings in which livestock or poultry are to be housed (temporarily or permanently) shall be back at least 100 feet from all property lines and no less than 25 feet from the right-of-way of a public street except as may be provided otherwise in 25 Pa.Code, Section 91.36.” The information I have is that the Township has concluded that the [REDACTED] barn is 55’ from a neighboring property thereby preventing them from running a swine operation.

The basis for the Township’s denial is a setback requirement. Discussion of setbacks necessarily requires consultation with the Nutrient Management Act (NMA), 3 Pa.C.S. §§ 501 *et seq.*, and the regulations establishing the setback distances. See 25 Pa.Code. § 83.351. These regulations establish setbacks ranging from 100 to 300 feet from water sources, wells, and property lines depending on the date of the operation and slope of the property. 25 Pa.Code § 83.351(a)(2)(v)-(viii). As previously explained the [REDACTED] proposed operation is not a Concentrated Animal Operation (CAO) or a Concentrated Animal Feeding Operation (CAFO). Animal operations that are not a CAO or CAFO are not subject to the NMA, including the setback requirements. Therefore, Woodward Township’s decision that the Grands cannot operate a pig farm based on the location of the barn conflicts with state law requirements.

The Commonwealth Court has specifically addressed whether a municipality can require smaller animal operations (non-CAOs or CAFOs) to mandatorily comply with the NMA. The Court unequivocally held that a municipality cannot require smaller animal operations to comply with the NMA when the General Assembly “has decided that such smaller farms should not be required to do so; rather they should be encouraged to do so voluntarily.” *Commonwealth v. Locust Township*, 49 A.3d 502, 511 (Pa.Cmwlt. 2012)(*en banc*).¹ The Court continued “[b]y requiring farms too small to meet the definitions of CAO or CAFO to submit...to what is required under the NMA, the Township attempts to make mandatory what the General Assembly has already decided must be voluntary.” *Id.* As a result, Locust Township’s ordinances requiring the non-CAO/CAFO farmer to comply with the mandates of the NMA were preempted by 3 Pa.C.S. § 519, *Preemption of Local Ordinances. Id.* The same is true here.

Additionally, although Woodward Township has not denied the [REDACTED] application to run a swine operation based on § 521(A)(5) that section, like subsection (A)(4), is preempted by state law. Subsection (A)(5) establishes setback distances for “outdoor feedlot[s], agricultural compost, manure or other similar unenclosed storage....” Once again the Township is requiring non-CAO/CAFO farmers to comply with the mandates of the NMA when no such state requirement exists.

The Township does have ordinances specifically pertaining to CAO/CAFO farming. See Part 5, SUPPLEMENTARY USE REGULATIONS, § 521(B), AGRICULTURAL USES,

¹ The NMA provides that smaller animal operations “may voluntarily develop” nutrient and odor management plans for approval by the State Conservation Commission (SCC). 3 Pa.C.S. §§ 506(h) & (f). Moreover, it is not as if smaller animal operations are not subject to regulation. DEP regulates all agricultural operations that produce manure whether or not such operations are a CAO or CAFO. See 25 Pa Code §91.36. This section sets forth requirements for manure storage facilities and for land application of manure and Woodward Township recognizes the existence and requirements of § 91.36 in § 521(A)(3) of its ordinances.

Concentrated Animal Operations and Concentrated Animal Feeding Operation Regulations. The CAO/CAFO ordinances do not apply to the [REDACTED] but during my review of the [REDACTED] case I noticed that the setback distance listed in § 521(B)(3) exceeds state law. Subsection (B)(3) requires that “buildings in which livestock and/or poultry are to be housed...shall be erected *at least* 300 feet from all property lines and dwellings...Where however, more restrictive setback requirements are established in the Nutrient Management Regulations, then those standards shall apply.” (emphasis added). As noted above, applicable regulations establish setbacks ranging from 100 to 300 feet from water sources, wells, and property lines depending on the date of operation and slope of the property. 25 Pa.Code § 83.351(a)(2)(v)-(viii). Initially it should be noted that there is no more restrictive setback requirement than 300 feet making that part of § 521(B)(3) referencing “more restrictive setback requirements” in the Nutrient Management Regulations a nullity. Under the regulations the maximum setback distance is 300 feet which only applies to a livestock or poultry operation “that [came] into existence after October 1, 1997” and “is located on slopes exceeding 8%, and if the slope is toward the property line, or the facility has a capacity of 1.5 million gallons or greater, unless the landowners within the 300 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the” SCC. 25 Pa.Code § 83.351(a)(2)(vi)(H). The state law is that the maximum setback can be no more than 300 feet, while Woodward’s ordinances state that the minimum setback can be no less than 300 feet. Therefore, § 521(B)(3) also conflicts with state law requirements.

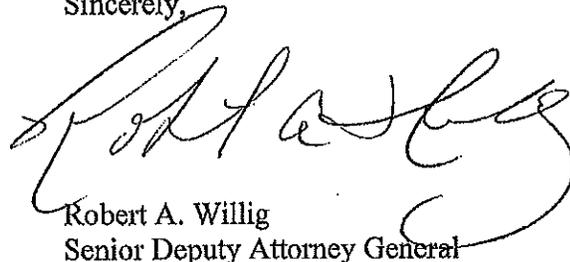
Conclusion

The Township must do the following to be in compliance with state law:

- Change the ordinances concerning normal agricultural operations as explained on pages 5 and 6 of my August 25, 2016 letter.
- Delete § 521(A)(4).
- Delete § 521(A)(5).
- Replace the current § 521(B)(3) with “Buildings in which livestock and/or poultry are to be housed shall comply with the setback requirements found in 25 Pa.Code § 83.351.”

Thank you for reviewing this letter and I look forward to the municipality’s response to our proposal to resolve this matter in an expeditious manner.

Sincerely,



Robert A. Willig
Senior Deputy Attorney General