

December 10, 2018

FIRST CLASS MAIL AND EMAIL: [REDACTED]

Robert A. Willig, Esquire  
Office of Attorney General  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, PA 15222

Re: ACRE Request - [REDACTED]  
Upper Milford Township - Lehigh County

Dear Attorney Willig;

Please be advised that the undersigned acts as Solicitor for Upper Milford Township ("Township"). Your letter dated November 13, 2018 addressed to the Township Board of Supervisors has been forwarded to me for reply. Please consider this letter as the response of the Township to the ACRE Complaint.

Firstly, by way of background, [REDACTED] are proposing to build an Animal Heavy Use Area. This will consist of a 9,600 square foot covered area for livestock and animal walkways at their property located at [REDACTED] in the Township. The project is located within the Little Lehigh Creek Watershed area and, therefore, is subject to Township Ordinance 106 known as the "Little Lehigh Creek Watershed Act 167 Stormwater Management Ordinance", as amended by Ordinance 106A, copies of which are enclosed for your review.

Secondly, since the proposed impervious coverage is greater than 4,000 square feet, the proposed activities are considered "Regulated Activities" within the meaning of Section 105 of Ordinance 106. The Ordinance, as amended, is a stormwater management ordinance whose purposes are delineated in Section 103. The Ordinance is neither designed nor intended to either prohibit or limit a normal agricultural operation, as that term is defined by law. Indeed, the Ordinance makes no references to farming or any type of agricultural operation. As stated in Section 103, the purpose is to promote public health, safety and welfare, which are purposes and duties normally left to be controlled at the municipal level.

Thirdly, and contrary to the statements in the Complaint, the [REDACTED] have the right to seek a Hardship Waiver following the procedures set in section 407 of the Ordinance. Specifically, Section 407.B. permits them to seek a Hardship Waiver before the Zoning Hearing Board if they believe the Ordinance inflicts an undue hardship upon them; however, the [REDACTED] do not wish and have not pursued that course of action.

WORTH  
MAGEE &  
FISHER  
LAW OFFICES

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Fourthly, all but one of the issues raised in the Complaint have been resolved. For your reference, I am attaching the minutes of the Township meeting from November 1, 2018, which occurred after the Complaint was sent on October 29, 2018. Those minutes reflect that the only issue remaining is whether or not the [REDACTED] are required and willing to enter into an Operations and Maintenance Agreement. Interestingly, the [REDACTED] have already applied with all the other aspects of the Ordinance by submitting a Drainage Plan and receiving Township approval of that Plan. Article 7 of the Ordinance sets forth how the post-construction stormwater BMP's will be properly operated and maintained. Section 704 requires that the property owner then sign an operations and maintenance agreement covering all stormwater BMP's that are to be privately owned, which is ultimately to be recorded. Nowhere in their Complaint have the [REDACTED] demonstrated why such an agreement limits or prohibits normal agricultural operations and is in violation of state law.

Lastly, Section 106 of the Ordinance provides various exemptions from the Ordinance requirements. Normal Agricultural Operations are not currently listed as an exemption. Notwithstanding that, the Township is currently considering various amendments to the Ordinance, one of which would be to exempt normal Agricultural Operations which would create 10,000 square feet or less of impervious coverage. If that provision is ultimately enacted, the ACRE Complaint would be moot. Those amendments are currently being reviewed by the Township Planning Commission.

In short, Ordinance 106 and 106A are neither designed nor intended to regulate normal Agricultural Operations and are strictly limited to stormwater management protection for the benefit of public health, safety and welfare. The Township does not believe its Ordinances are in violation of ACRE; however, the [REDACTED] are well known and well respected members of the community and the Township is committed to trying and find an amicable resolution to this matter should your office conclude otherwise.

Please feel free to contact me if you have any questions.

Sincerely,

WORTH, MAGEE & FISHER, P.C.

  
Marc S. Fisher, Esquire  
MSF/yak

Cc: Edward Carter, via facsimile  
Brian Miller, via facsimile

UNAPPROVED MINUTES

Upper Milford Township  
Board of Supervisors  
Township Building, Old Zionsville, PA 18068  
November 1st, 2018 at 7:00 p.m.  
WORKSHOP MEETING MINUTES

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**ATTENDANCE:** Supervisors: Daniel Mohr, Robert Sentner, Joyce Moore; Manager, Bud Carter; Planning Coordinator, Brian Miller; Township Engineer, Jeffery Ott; Solicitor, Marc Fisher; Secretary/Treasurer, Jessi O'Donald

Meeting called to order at 7:00 pm.

**ANNOUNCEMENTS:**

This meeting is being recorded principally to aid in the preparation of Minutes and for such other purposes as the Board sees fit. For that reason, will each person wanting to give any comments during this meeting, please state your name for the record and address the Board of Supervisors.

**PUBLIC INPUT:**

██████████ expressed his concern over hiring another Public Works Employee. He explained that he saw a Public Works truck go past Bear Swamp Diner around 7am October 22<sup>nd</sup>, 2018. He waited for the truck to go past again. When it didn't return he drove to Wawa on Rt 100 Macungie and saw the truck there. He then went back to the diner to time how long the employees were gone. The truck went back past the diner around 7:50. By his calculations the Township Lost four man power hours as there were two employees in the truck.

Manager Carter expressed that he would look into the concern.

██████████ – ██████████ is very adamant that his Heavy Animal Use area project should be exempt from a Township O&M agreement since the project is a Stormwater/Nutrient reduction project aimed at reducing the amount of manure that washed directly into the stream along his pasture. He states that in Lebanon, York, Lancaster Counties the state has come in and made farmers install these types of areas to control nutrient infiltration into the watershed. He claims that in these areas the farmers are exempt from O & M agreements and that our Act 167 regulation is in direct conflict with the Acre Law. His concern is that his project is just under an acre of disturbance at 9,600 square feet and the Township's ordinance is 10,000 Square feet for an NPDES permit. ██████████ read from an excerpt of a Stormwater PA file. He refuses to sign the O&M agreement because he doesn't feel it pertains to him and it contains language that does not fit his property or project. He has spoken with Tim Shaffer the Deputy DEP Secretary. ██████████ stated that the Township Ordinance cannot be more restrictive than the State regulation.

**UNAPPROVED MINUTES**

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There was a brief discussion including the Board of Supervisors, Planning Coordinator Brian Miller, Manager Bud Carter, Solicitor Marc Fisher and Township Engineer Jeffery Ott. It was determined through this conversation that [REDACTED] [REDACTED] Property is located within the MS4 Urbanized Zone for Stormwater control. This mean the O&M would stand since all stormwater improvements need to be recorded. Everything has been approved for [REDACTED] project except for their signing of the O&M agreement. There was a suggestion by Solicitor Fisher that if the concern is the language used in the O&M agreement, [REDACTED] [REDACTED] should notate what they believe the O&M agreement should stipulate for staff to review. It was questioned again how to get all the right people in the same room to discuss this concern from all the Outside agencies that regulate these matters.

**EXECUTIVE SESSION:** Legal Matter – Postponed until regular meeting.

**OLD BUSINESS:** - None

**NEW BUSINESS:** - None

**ANY OTHER BUSINESS:** - None

**ADJOURNMENT:** Meeting was adjourned at 7:37 pm.

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Chairman Daniel Mohr

11/15/2018  
Date

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Secretary Jessi O'Donald