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August 7, 2019

**Sent via Email and U.S. First Class Mail**

Robert A. Willig, Esquire  
Senior Deputy Attorney General  
**Office of the Attorney General**  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, Pennsylvania 15222  
[REDACTED]

RE: ACRE Review Request  
Codorus Township-York County [REDACTED]

Dear Mr. Willig:

Our law firm serves as Solicitor for the Board of Supervisors of Codorus Township. We understand that [REDACTED] a resident of Codorus Township, has requested an ACRE review of the Codorus Township Health Ordinance, Ordinance No. 15-06 (hereinafter the Health Ordinance), and the Codorus Township Zoning Ordinance (hereinafter the Zoning Ordinance), and how they relate to a CAFO (concentrated animal feeding operation).

Initially we would note that the ACRE statute specifically defines an "unauthorized local ordinance" as follows:

An ordinance enacted or enforced by a local government unit which does any of the following:

(1) Prohibits or limits a normal agricultural operation unless the local government unit:

(i) has expressed or implied authority under state law to adopt the ordinance; and

(ii) is not prohibited or preempted under state law from adopting the ordinance.

(2) Restricts or limits the ownership structure of a normal agricultural operation.

A review of the letter of [REDACTED] dated February 5, 2019; reveals that nowhere in the letter does [REDACTED] contend that the ordinances of Codorus Township limit the ownership structure of a normal agricultural operation. Therefore, it must be assumed that [REDACTED] is contending that the ordinances of the Township prohibit or limit normal agricultural operations, either without express or implied authority under state law to adopt the ordinance, or that the Township is prohibited or preempted by state law from adopting the ordinance.

[REDACTED] states in his letter that he has one (1) hog building in his operation and wants to build a second hog building. He then asserts that his operation would become a CAFO subject to the Health Ordinance. [REDACTED] claims his operation would be a CAFO under federal regulations, a fact that may or may not be true, but has no relevance under the Codorus Township Ordinance. [REDACTED] submits no information to determine if his operation would be subject to the Health Ordinance. The Health Ordinance is only subject to a CAFO with greater than three hundred (300) animal equivalent units. It is impossible to determine if his proposed operation would meet the parameters that would invoke the provisions of the Health Ordinance.

Assuming, without admission, that the Health Ordinance would apply to [REDACTED] Codorus Township submits that the Ordinance does not violate the ACRE statute. The ACRE statute prohibits a local municipality from adopting an ordinance that infringes upon a normal agricultural operation unless the local government unit has express or implied authority to adopt the ordinance. There can be no question that the elected officials of a local government unit have both the express and implied authority to adopt ordinances that protect the health, safety, and welfare of its citizens. The title of the Health Ordinance provides that it is "establishing health, safety, and welfare regulations for concentrated animal feeding operations." The preamble to the Health Ordinance cites specific constitutional and statutory authority granting the Township the power to adopt the Ordinance. Therefore, the Health Ordinance is not an unauthorized ordinance under subparagraph (1)(i) of the ACRE determination.

In his letter, [REDACTED] cites no authority to show that any state law or regulation has prohibited or preempted the Health Ordinance as adopted by Codorus Township.

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Therefore, subsection (ii) of subsection (1) of the definition of an unauthorized local ordinance is not applicable in this situation.

Likewise, with respect to the Zoning Ordinance, it is without question that the Township possesses both explicit and implied authority to adopt a zoning ordinance. The Pennsylvania Municipalities Planning Code (hereinafter the MPC), 53 P.S. §10101, et seq. specifically grants municipalities the power to adopt zoning ordinances. 53 P.S. §10601. Section 603(b) of the MPC provides, in essence, that a zoning ordinance may not contain provisions that exceed the requirements of the Nutrient Management Act, the Agricultural Area Security Law, or the Pennsylvania statute entitled, "An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances."

CAFOs are permitted by special exception in the Agricultural Zone of Codorus Township. Although [REDACTED] does not explicitly state the zone in which his land is located, it is assumed that he is in the Agricultural Zone because the vast majority of all lands in Codorus Township are zoned agricultural. In fact, since its inception, the Zoning Ordinance of Codorus Township has been drafted and amended to preserve quality agricultural lands which the Zoning Ordinance identifies as the Township's most important natural resource.

The Zoning Ordinance defines a CAFO. A copy of the definition of a CAFO as contained in the Zoning Ordinance is attached to this letter and it is noted that the definition in the Zoning Ordinance is identical to the definition of a "Large CAFO" as contained in 40 CFR §122.23. As indicated, a CAFO is permitted by special exception in the Agricultural Zone. Section 607 of the Zoning Ordinance (copy attached) sets forth the specific criteria that must be presented to the Zoning Hearing Board for the grant of a special exception. A review of those criteria clearly indicates that the applicant must comply with the Nutrient Management Act, the Odor Management Act, as well as various other federal and state statutes that are applicable to CAFOs. However, none of the requirements for a special exception under the Zoning Ordinance exceed the requirements of the Nutrient Management Act or any other act that is designed to promote and protect normal agricultural operations, including CAFOs, in Codorus Township. Only if the requirements and regulations of the Zoning Ordinance exceeded the requirements of the Nutrient Management Act would Section 603(b) of the MPC prohibit the provisions of the Codorus Township Zoning Ordinance.

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The letter of [REDACTED] addressed to the Attorney General, while lengthy, does not demonstrate how the Health Ordinance or the Zoning Ordinance violate the ACRE statute. [REDACTED] uses a "shotgun" approach where he quotes selected sections of ordinances and statutes which he finds objectionable and hopes that one or more of his objections, in toto, will somehow constitute a violation of the ACRE statute. For example, he objects that the Zoning Ordinance requires continued compliance with the provisions of Section 607 of the Zoning Ordinance as well as the requirements of 25 Pa Code, Chapters 83 and 91. He then asks if the Use Certificate can be revoked and the operation shut down for non-compliance after it is built. Clearly regulations are not designed for one specific moment in time - the issuance of a use certificate. Ongoing compliance with regulations, whether they are promulgated by the local municipality or the Commonwealth, must be mandated or the regulations are worthless.

Codorus Township submits that the letter submitted by [REDACTED] is nothing more than his manner of protesting against validly enacted and implemented ordinances of Codorus Township. The ordinances as enacted do not violate the provisions of the ACRE statute in that the Township has both express and implied authority to enact the ordinances objected to by [REDACTED]. Furthermore, the challenged ordinances are not prohibited or preempted under state law. On the contrary, the ordinances were drafted and enacted so as not to violate the Nutrient Management Act, the Odor Management Act, or any other federal or state statute dealing with the right to conduct normal agricultural operations.

Agricultural operations are a significant and integral part of the economy of Codorus Township. The elected officials of Codorus Township have always erred on the side of promoting and sustaining normal agricultural operations within the confines of Codorus Township. However, recognizing that CAFOs and other large agricultural operations have the potential to impact the health, safety, and welfare of the citizens of Codorus Township, the Board of Supervisors of the Township found it necessary to enact the ordinances to which [REDACTED] objects. The Township believes that the ordinances were enacted in good faith in order to protect the health, safety, and welfare of the citizens of the Township, are in full compliance with all federal and state statutes, and do not constitute an "unauthorized local ordinance" under the ACRE statute.

Codorus Township respectfully submits that [REDACTED] be informed by the Attorney General that his complaints are without merit and the questioned ordinances of

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Codorus Township are in full compliance with the ACRE statute as well as any and all other federal or state statutes that encourage and protect normal agricultural operations.

Respectfully submitted,

**Griest, Himes, Herrold, Reynosa LLP**

By:   
\_\_\_\_\_  
John C. Herrold, Township Solicitor

JCH/bss  
attachment

- c. Plant materials used in the screen planting shall be at least six (6) feet in height when planted.
- d. The screen planting shall be maintained permanently, and any plant material which does not live shall be replaced within one (1) year.
- e. When owing to existing conditions, the provisions of the buffer yard and screening would create a hardship, the Zoning Hearing Board may authorize a reduction and/or waive the buffer yard and screening requirements.

**SECTION 606      SINGLE-FAMILY DWELLINGS IN FLOOD PLAIN AREAS**

1. No single-family dwelling shall be located on any flood plain. The flood plain is established as those lands in the Township whose soils are subject to periodic flooding or overflow as described on the most recent maps prepared by the Federal Emergency Management Agency (FEMA). These areas have not been included on the Zoning map.
  - a. The precise boundaries of the flood plain need not be established or located and marked on any property until the time of the application for any building or development plan or the approval of a subdivision plan. If more detailed surveys are required to determine the precise flood plain boundaries on a property than can be obtained from the "Soil Survey, York County, Pennsylvania," or the Corps of Engineers Office, the Township may cause on-site surveys to be made. These may be made by the Township Engineer, the U.S. Department of Agriculture, Soil Conservation Service or any other qualified agency selected by the Township. Any property owner whose property is surveyed to fix the precise boundaries of the flood plain shall pay all costs of these studies and surveys.
  - b. In no case shall an approval by the Township for a variance represent any assurance by the Township that the property will not be damaged by flood. This also does not constitute any form of assurance that properties not located on flood plain soils are free from flooding and in no case shall the Township or its officials be held liable for damages sustained by flooding.

**SECTION 607      CONCENTRATED ANIMAL FEEDING OPERATIONS**

The requirements of this section shall apply to all Concentrated Animal Feeding Operations (CAFOs) and all operations that expand or modify their operations so as to cause them to become CAFOs. There shall be no minimum lot size for this use.

**a. Building Permit**

Prior to receiving a building permit to construct any structures or other facilities to be utilized in connection with a CAFO, the applicant must establish and provide documentation to the Township of the following:

- (1) That a special exception has been obtained if required by the provision of subsection (b) hereof.

- (2) That a land development plan including a storm water management plan and an erosion and sediment control plan for the site meeting the requirements of the Township Subdivision and Land Development Ordinance has been approved by the Township. The land development plan must establish that all manure storage facilities will be located in accordance with the applicable setbacks set forth in 25 Pa. Code Chapter 83 and approved Nutrient and Odor Management Plans and all carcass storage facilities or composting facilities and other structures or facilities to be used in connection with the CAFO will be located in accordance with an approved Odor Management Plan.
- (3) That all animal concentration areas, manure storage facilities and/or carcass storage or composting facilities and other buildings or structures have been designed in accordance with all applicable federal, state and local laws and regulations including but not limited to those of the Department of Environmental Protection set forth in 25 Pa. Code, Chapters 83 and 91 and those of the Environmental Protection Agency set forth in Volume 40 of the Code of Federal Regulations and that a Pennsylvania registered professional engineer has certified that the design of the manure storage facilities are in accordance with such applicable federal, state and local laws and regulations and that all permits required by such laws and regulations have been obtained.
- (4) That if new or additional driveway access from a public road will be utilized a driveway permit has been approved.
- (5) That the proposed operation has received an NPDES permit from the Pennsylvania Department of Environmental Protection, as agent for the United States Environmental Protection Agency and has filed a copy thereof with the Township.
- (6) That an Operators Site Specific Nutrient Management Plan has been approved by the State Conservation Commission or its designated agent with a copy provided to the Township.
- (7) That an Odor Management Plan and Odor Site Index Plan approved by the State Conservation Commission or its designated agent has been submitted to the Township.
- (8) If not included within an approved nutrient management plan submitted to the Township, the applicant must provide to the Township emergency contact information.
- (9) If the proposed manure storage facility is to incorporate a leak detection system, the applicant must provide the Township with an identification and description of the record keeping and inspection requirements with respect to such system.

b. Special Exceptions

- (1) A special exception to be granted by the Zoning Hearing Board shall be required prior to issuance of a building permit to construct any buildings or other structures to be utilized in connection with a CAFO. The application will be reviewed by the Zoning Hearing Board pursuant to the provisions of Sections 1007 of the Township Zoning Ordinance. In addition to the general standards set forth in Section 1007 (except Section 1007(7), the applicant must establish that all requirements set forth in Section 607(a)(2) through (9) as prerequisites for obtaining a building permit have been met.

- (2) Any special exception granted by the Zoning Hearing Board shall impose only such additional conditions as are permitted by Section 912.1 of the Pennsylvania Municipalities Planning Code (53 P.S. §10912.1). Any special exception shall be specifically conditioned upon continued compliance with all the requirements of this Section (607), and all other relevant provisions of this Ordinance and with all the requirements of 25 Pa. Code, Chapters 83 and 91 and with the implementation of all provisions of the proposed Odor Control Plan and with the representations set forth in the application.

c. Use Certificate

Prior to issuance of a use certificate the applicant must provide to the Township documentation establishing compliance with the following conditions:

- (1) That the Township Engineer has certified that proposed storm water management facilities have been constructed consistent with the requirements of the approved land development plan and the storm water management plan submitted in conjunction with the land development plan.
- (2) That a registered professional engineer employed by the Township or by a Commonwealth agency has certified that all driveways, buildings, animal concentration areas, manure storage facilities, carcass storage facilities, carcass compost facilities and other associated buildings and structures which have been permitted have been constructed in accordance with the plan submitted to the Township and in accordance with all applicable federal, state and local laws and regulations including, but not limited to, those of the Pennsylvania Department of Environmental Protection as set forth in 25 Pa. Code, Chapters 83, 91 and 92, those promulgated by the United States Environmental Protection Agency as set forth in Volume 40 of the Code of Federal Regulations and in accordance with the building permit issued by the Township.
- (3) All requirements imposed by any NPDES permit have been completed and approved by the Pennsylvania Department of Environmental Protection.
- (4) That the applicant has filed with the Township a plan for the disposal of dead animals consistent with the requirements of the Pennsylvania Department of Environmental Protection and the Domestic Animal Law, 3 Pa. C.S.A. §2352.
- (5) That there has been provided to the Township copies of all waivers, permits, approved plans or other documentation required by the Pennsylvania Department of Environmental Protection and/or the United States Environmental Protection Agency prior to commencement of operations.
- (6) Any use certificate shall be specifically conditioned upon continued compliance with all the requirements of this Section (607), and all other relevant provisions of this Ordinance and with all the requirements of 25 Pa. Code, Chapters 83 and 91, with the implementation of all provisions of the proposed Odor Control Plan and with the representations set forth in the application.

d. Operation

Following issuance of the use certificate:

- (1) The holder of the use certificate must insure that the documentation filed with the Township to meet the requirements of Section 607 are maintained current to permit continuing operation of the use. Copies of modifications, amendments and/or termination of any of those documents must be forwarded to the Township within thirty (30) days following modification, termination or approval of such amended plans or permits.
- (2) The owner of the parcel where the CAFO is located must insure that all provisions of this Ordinance, all provisions of the nutrient management plan, all provisions of the NPDES permit, all provisions of the Odor Control Plan and all provisions of the approved land development plan including storm water management plan and erosion and sediment control plan are complied with.
- (3) The owner must inform the Township of any changes in the owner's plan of operation such as an increase in the number of animals beyond that set forth in the special exception application which would cause the operation to be inconsistent with the special exception application and apply for and obtain a modification of his special exception before implementing such changes.
- (4) The owner must, before the first day of any calendar year, provide to the Township copies of all reports of any state inspections of any leak detection system during the prior calendar year.
- (5) It shall be the responsibility of the owner of the property where any CAFO is located to demonstrate to the Township continuous compliance with the requirements of this Ordinance and supply such documentation as is reasonably requested by the Township in order to verify such compliance.

**SECTION 608 VETERINARY OFFICE OR ANIMAL HOSPITAL**

1. Defined herein as any building used by a veterinarian for the treatment, housing or boarding of small domestic animals such as dogs, cats, goats, rabbits and birds or fowl, provided:
  - a. If only small animals are to be treated (dogs, cats, birds and the like) such hospital or office shall have a minimum lot area as specified for the District in which it is located.
  - b. If large animals are to be treated (cows, horses, pigs, and the like), such office or hospital may be located only in the Agricultural District and shall have a minimum lot area as specified for the Agricultural District.

**SECTION 609 PUBLIC UTILITY BUILDING**

The provisions of this Ordinance shall not apply to any existing or proposed building or extensions thereof used or to be used by public utility corporations if, upon petition of the corporation, the