

January 3, 2020

David A. Jones, II, Esquire

Direct Dial: [REDACTED]

Email: [REDACTED]

Via U.S. Mail and Email: rwillig@attorneygeneral.gov

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

Re: ACRE Review Request – Fairview Township – York County
[REDACTED]

Dear Attorney Willig:

Fairview Township, York County (the “Township”) is in receipt of your letter of December 18, 2019, regarding the above-referenced ACRE review requested by [REDACTED]. The Township has forwarded the letter to me for response as the Township’s solicitor. By way of initial response, [REDACTED] has not accurately represented the nature of his request to the Township, nor the extent of the use presented to the Township Zoning Hearing Board (the “ZHB”) on March 21, 2019 and I believe the additional information will help your office better understand the basis for the Township’s legal analysis.

[REDACTED] applied to the ZHB to request a Special Exception for the purpose of constructing a 10,000 sq. ft. building to be used “for wine manufacturing, tasting, sales and an event room to host social gatherings at [REDACTED] in the Single-Family Residential (RS) Zoning District.” Quotations are from the ZHB decision, which is attached and is incorporated herein by reference. At the present time, the property consists of 37.0994 acres and is improved with three small structures, two equipment buildings and a small sales office for the tree business. Testimony indicated that there were Christmas trees and three acres of grapes being grown on the property also.

At the hearing, [REDACTED] were represented by counsel, Scott Harper, Esquire and a local engineering firm, Hoover Engineering, Inc., Chris Hoover, P.E. The applicants testified that they would be operating under a limited winery license issued by the PLCB and would permit the applicants to authorize the manufacture of up to 200,000 gallons of wine per year, permit the sale

of wine on the premises to individuals, permit the sales of wine by phone, mail or internet, provide free sampling on premises and carry on certain other activities, including food sales on the premises.

During the hearing, Chris Hoover, P.E. testified as to the proposed use and a site drawing that he had prepared. He indicated that the building would be a bank-barn style, two-story structure accessed by a paved driveway from [REDACTED]. Per the site plan, the paved driveway is to be located near the property line of residences fronting on an adjacent road to the south of the [REDACTED] land. Mr. Hoover testified the buffering and landscaping would be provided to limit the roadway impact upon the neighboring residences. Further, and specifically, Mr. Hoover testified that, *“the precise site improvements, including any buffering required by township ordinance, will be required to be addressed in the subsequent land development plan permitting process.”* Further, the Township Zoning Officer, Stephen Waller, indicated on the record that the “various elements of the driveway entry and exit on [REDACTED] and the configuration of the driveway from the roads to the proposed winery site would be addressed in the Fairview Township land development permitting process when neighbors raised concerns about increased traffic on [REDACTED] and impacts on neighboring properties. The proposed use was approved by decision, dated April 18, 2019, with three conditions, relating to hours of operation, the prohibition of outdoor concerts or musical events and the driveway being a minimum of 40 feet from the adjoining property line. I would note that the Township Zoning Officer supported the application, and neither [REDACTED] nor the Township appealed the decision of the ZHB.

[REDACTED] approached the Board of Supervisors at their September 30, 2019, meeting to request a waiver of the land development plan under the theory that the proposed use fell under an exception to the Township Subdivision and Land Development Ordinance (the “SALDO”) which exempts from the definition of land development “the addition of an accessory building, including farm building, on a lot or lots subordinate to an existing principal use.” [REDACTED] also cited to the Township Zoning Ordinance for the definition of an “Accessory Building” as “a detached, subordinate building or structure, the use of which is customarily incidental and subordinate to that of the principal building, structure, or otherwise principal use of the lot, and which is located on the same lot as that occupied by the principal building, structure or otherwise principal use of the lot.” He also cited to the definition of “Agri-tainment/Agri-tourism” which means, “an enterprise upon and accessory to a working farm or agricultural operation and offered to the public or to invited groups for the purpose of combining and providing the elements and characteristics of agriculture, entertainment, education, recreation, or active involvement in the farm operation.”

Unfortunately, [REDACTED] looks at just those sections of the Township Ordinances that he believes support his position in a vacuum. The definition of a land development in the SALDO states that that a land development includes, among other things, “The improvement of one or more contiguous lots, tracts or parcels of land for any purpose involving...a single nonresidential building on a lot or lots, regardless of the number of occupants or tenure.” There is an exception for “the addition of an accessory building, including farm building, on a lot or lots subordinate to an existing principal building.” The Township routinely exempts agricultural buildings which are constructed within the Township where such buildings fall within this exemption. In the Township’s analysis, an example of an accessory building that would be exempt from the land development process would be a new barn that is used to store tractors or other farm implements

that are used on the tree farm or to plant and harvest corn or used to plant, harvest and process grapes. From the Zoning Decision, it is clear that the proposed limited winery use is not intended to be an accessory use that would be subordinate to the existing farm. It is intended to be a destination or use that people come to as their primary reason for coming to the property. Given the size of the project and the proposed type of activities, this limited winery would be a principal use that is open the general public separate and apart from the tree farm use.

Further, the Township considered the definition of an "agricultural building" as set forth in the Pennsylvania Uniform Construction Code given that the UCC provides an exemption for agricultural buildings. As you are probably aware given your experience, the term "agricultural building" is defined in the Code and specifically EXCLUDES "habitable space or spaces in which agricultural products are processed, treated or packaged and shall not be construed to mean a place of occupancy by the general public." Unfortunately, what has been proposed by [REDACTED] is exactly what is excluded from the definition of an agricultural building. The building will be used to process grapes and to hold events that are open to the public. The Township understands the reason for this exclusion is to ensure the buildings that people will be occupying on a consistent basis will be well built, will have safety features and will be accessible to people with disabilities, as required by law.

Given [REDACTED] own testimony as to the use of the property and the Township's interpretation of its Ordinances, not to mention the representation made to the ZHB and referenced in its decision, the Board denied [REDACTED] request to waive the requirement of a land development plan. However, the Board encouraged [REDACTED] to contact the Township staff to attempt to streamline the land development process, which [REDACTED] has not done. Further, the Township categorically denies any allegation that the Board or the Township staff have a desire to cause the [REDACTED] tree farm to fail or to force it to be sold for residential development. To the contrary, [REDACTED] threatened to sell it for residential development when it appeared that his request would not be granted. The Township can provide a video of the meeting if you would like to verify [REDACTED] statement. In addition, the Board of Supervisors has consistently encouraged and promoted commercial and business growth over the past few years. Had [REDACTED] done his research, he would understand that the last thing the Township desires is residential growth due to the ever-rising cost of providing services to individual residents vs. commercial and industrial properties.

This all being said, it appears that your office is conducting a review of the Township's SALDO under ACRE. My understanding of the ACRE law is that "[a] local government unit shall not adopt nor enforce an unauthorized local ordinance." 3 Pa.C.S. 313(a). An "unauthorized local ordinance" is defined as:

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.

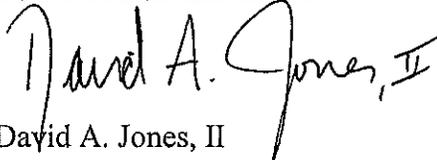
3 Pa.C.S. 312. The Township has the express authority to adopt and enforce a subdivision and land development ordinance under the Pennsylvania Municipalities Planning Code, as amended and supplemented. To the best of my knowledge, the Township is not prohibited or preempted under caselaw or any statute from adopting a subdivision and land development ordinance. Further, [REDACTED] has not alleged that the Township is attempting to restrict or limit the ownership structure or a normal agricultural operation. As such, I would respectfully submit to your office that the Township is not in violation of ACRE and this investigation should be closed.

To the extent that [REDACTED] does not agree with the Township's interpretation of its SALDO and the denial of his request thereunder, his remedy would be to appeal the Township's decision to the Court of Common Pleas in accordance with the SALDO and the Pennsylvania Municipalities Planning Code.

The Township ordinances may be viewed at: <https://www.ecode360.com/FA2330>. Given their length, I did not include copies for your review. Please feel free to contact me should you have any questions or need any additional information.

Sincerely,

STOCK AND LEADER


David A. Jones, II

DAJII/daj
Enclosure

cc: Board of Supervisors, Fairview Township
Donald F. Martin, Township Manager
Stephen Waller, Township Zoning Officer

IN THE MATTER OF : BEFORE THE FAIRVIEW TOWNSHIP
THE APPLICATION OF : ZONING HEARING BOARD
[REDACTED] : YORK COUNTY, PENNSYLVANIA
[REDACTED]

**DECISION GRANTING A SPECIAL EXCEPTION PURSUANT TO SECTION 300-4
OF THE FAIRVIEW TOWNSHIP ZONING ORDINANCE**

The Applicants applied for a special exception pursuant to Section 300-4 of the Fairview Township Zoning Ordinance (Interpretation and Uses Otherwise Not Provided For) for the purpose of constructing a 10,000 +/- square foot building to be used for wine manufacturing, tasting, sales and an event room to host social gatherings at [REDACTED] in the Single-Family Residential (RS) Zoning District. A hearing on the application was held on March 21, 2019, at 6:30 p.m. at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.

FINDINGS OF FACT

1. The Applicants are [REDACTED] [REDACTED] is the owner of the premises which is the subject of the application. [REDACTED] his son, is the operations director of the tree farm business currently conducted at the site. The premises consists of 37.0994 acres with frontage on [REDACTED] [REDACTED] The premises is presently improved with three small structures, two equipment buildings and a small sales office for the tree business.

2. The Applicants were represented by Scott Harper, Esquire, 1701 West Market Street, York, PA 17404. Testifying for the Applicants were [REDACTED] and Chris Hoover, P.E., Hoover Engineering Services, Inc., 658 Gaumer Road, New Cumberland, PA 17070.

3. The Applicants requested a special exception pursuant to Section 300-4 of the Fairview Township Zoning Ordinance for the purpose of adding a wine manufacturing, tasting and sales business to the tree farm at their property. The wine manufacturing, tasting and sales would be conducted from a 10,000 +/- square foot building to be constructed on the property. The building will also have an event room to be used for hosting social events. The wine business would operate under a "limited winery" license issued by the Pennsylvania Liquor Control Board ("PLCB"), which would authorize the manufacturing of up to 200,000 gallons of wine per year. Issuance of the license requires, among other stipulations, local governmental approval of the business. The license allows the licensee to sell the wine to other licensees, sell to individuals, on premises, or by mail, phone, and internet, provide free sampling on premises, and carry on certain other activities, including food sales on premises. The license terms are set out in 47 P.S. §5-505.2.

4. Notice of the hearing was properly advertised; the property was properly posted; and all neighboring property owners required to be notified of the hearing were notified in accordance with the Township Ordinance and the Pennsylvania Municipalities Planning Code.

5. The Applicants have operated a tree farm at this property for 40 years, the business having been started by [REDACTED]. Christmas trees are sold from the farm on a cut-your-own basis and also are retailed and wholesaled by the Applicants. At present, there are 3 acres of wine grapes cultivated on the premises, in addition to the Christmas trees.

6. Chris Hoover, P.E., Hoover Engineering Services, Inc., testified on behalf of the Applicants. Mr. Hoover prepared Applicants' Exhibit 1, a site plan drawing of the Applicants' property and the proposed location of the building for the winery. Mr. Hoover described the building as a bank-barn style, two-story structure which will be 300 feet from the closest property line. The building will be accessed by a paved driveway from [REDACTED]. The access drive will run near to the property line for the residences on [REDACTED] which adjoins the [REDACTED] parcel to the south. Mr. Hoover described the buffering and landscaping that would be provided to limit the roadway impact upon the neighboring residences. The precise site improvements, including any buffering required by the township ordinances, will be required to be addressed in the subsequent land development plan permitting process.

7. Several residents and property owners on [REDACTED] adjoining the property testified. Also, residents adjoining the property on [REDACTED] and [REDACTED] appeared and testified. There was no opposition from the neighbors to the proposed limited winery itself. The primary concern of all nearby residents was the traffic impact on [REDACTED] and the possible impact upon neighboring residences of the access roadway and on-site traffic to the winery. Some neighbor testimony noted that the continued agricultural uses were desirable in keeping the overall intensity of development in the community more limited.

8. Stephen M. Waller, Codes Administration Director for Fairview Township, testified that the Applicants' property is in the RS district of the township and that an agricultural operation, including a tree farm and grape vineyards, is a permitted use. However, the manufacturing of wine in a limited winery is a use neither specifically permitted nor prohibited in the Township. He discussed that various elements of the driveway entry and exit onto [REDACTED]

██████ and the configuration of the driveway from the road to the proposed winery site would be addressed in the Fairview Township land development permitting process. He noted that public sewer was available to the site and the Applicants indicated their intention of connecting the winery facilities to the public sewer.

9. The Applicants, in response to questions with respect to the social event hosting plans, indicated that they did not expect to have large outside events, although a patio area is planned outside the winery building.

10. The Applicants demonstrated that the proposed limited winery meets the requirements of the Ordinance for a Section 300-4 special exception which provides that the proposed use may be granted a special exception if it is "in general conformity" with the Fairview Township Comprehensive Plan and meets the criteria set out in Section 300-4.B(2)-(7) of the Ordinance. The limited winery operation at this location will be equal to or less intensive than other permitted uses which could be made of the property under the Ordinance. Consistency of the application with any special requirements in Article VII of the Zoning Ordinance was established through the Applicants' witnesses; and the testimony of the Township's Codes Administration Director did not identify any deficiencies in this regard. Furthermore, the requirements for all special exceptions, in Section 300-99 of the Ordinance were met, subject to the conditions set hereafter by the Board.

11. The hours of operation of the winery, the possibility of noise from outdoor events, and the proximity of the driveway to the adjoining residences are issues that should be considered. Unless reasonably limited, the hours of operation could have a negative impact upon the adjoining residential community. Therefore, the hours of operation should be limited to

Noon to 10:00 p.m. Monday through Saturday and Noon to 8:00 p.m. on Sundays. There should be no outdoor music in connection with any social events. Also, the paved cartway for the entrance drive should be no closer than 40 feet to the property line.

CONCLUSIONS

1. The Applicants have the burden of establishing entitlement to the requested special exception and demonstrating that all requirements of the Fairview Township Zoning Ordinance are met.

2. On the basis of the testimony and documentary evidence presented, the Board finds and concludes: (1) that the operation of a limited winery, which is not expressly permitted in any zoning district in the township, is a "use not otherwise provided for" which should be allowed as a special exception in the Single-Family Residential (RS) District; and (2) the Applicants have met all the requirements for a special exception under Fairview Township Zoning Ordinances Sections 300-4, 300-76, and 300-99 and thereby established their entitlement to a special exception for a limited winery at [REDACTED], subject to the following conditions:

- A. The hours of operation shall be Noon to 10:00 p.m., Monday through Saturday; and Noon to 8:00 p.m., on Sunday;
- B. No outdoor concerts or musical events shall be held; and
- C. The entry roadway to the winery and event facility shall be set back a minimum of 40 feet from the adjoining property line.

DECISION

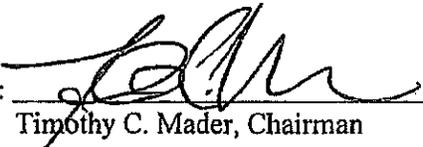
On the basis of the foregoing findings and conclusions and on the basis of all the testimony and evidence presented to the Board at the hearing, the request for a special exception for the purpose of operating a limited winery at [REDACTED] is granted subject to the following conditions:

- A. The hours of operation shall be Noon to 10:00 p.m., Monday through Saturday; and Noon to 8:00 p.m., on Sunday;
- B. No outdoor concerts or musical events shall be held; and
- C. The entry roadway to the winery and event facility shall be set back a minimum of 40 feet from the adjoining property line.

The Application was approved as stated upon the motion of Mr. Perry, seconded by Mr. Bashore, and adopted 3-0 by the Board Members present and voting.

FAIRVIEW TOWNSHIP ZONING HEARING
BOARD

Dated: April 18, 2019

By: 
Timothy C. Mader, Chairman

Distribution: Scott Harper, Esquire, *for Applicant*

