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Please respond to: Trevoese

June 2, 2020

**Via E-Mail and Regular Mail**

[REDACTED]  
Office of the Attorney General  
ATTN: Senior Deputy AG Robert A. Willig  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, PA 15222

Re: ACRE Complaint- Abington Township, Montgomery County [REDACTED]

Dear Senior Deputy Attorney General Willig:

Please accept this correspondence as the Township's response to your May 7, 2020 letter regarding the Agricultural Communities and Rural Environment law ("ACRE") complaint of [REDACTED]. It is the Township's view that the Township's Zoning Ordinance is not an unauthorized local ordinance under Section 312 of ACRE as the Township has express authority under the Municipalities Planning Code to adopt it and "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances", also known as the Right to Farm Law ("RTFL"), does not prohibit or preempt the Township's authority to establish zoning districts and restrict uses within those districts.

On or about April 5, 2020, the Township Police Department received a complaint of a farmer's market being operated at [REDACTED] Property, [REDACTED] ("Property"). The Property is zoned R-1 Low Density Residential pursuant to the Township Zoning Ordinance. Within that District,

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agricultural uses are permitted, but only on lots 10 acres or more. The Property is only 25366 SF, or approximately .58 acres. The Township's Engineering & Code Enforcement Department sent a cease-and-desist letter to [REDACTED] dated April 6, 2020 that provided [REDACTED] notice that a farmer's market is not permitted as a primary or accessory use in the District, nor does it constitute a permitted Home Occupation or No-Impact Home-Based Business.

After sending the April 6, 2020 letter, the Township began to review [REDACTED] agricultural use of this Property within the R-1 District. The Township found that [REDACTED] created a farm in the rear portion of the Property behind the residence. Subsequently, the Township's Zoning Officer notified [REDACTED] by email that he would need to seek approval from the Township's Zoning Hearing Board to continue the agricultural use of the Property and that the operation of a Farmer's Market is not permitted. On April 29, 2020, The Township received a Zoning Hearing Board application for the Property. To date the Township has not cited [REDACTED] or the Property for any violations of the Township Zoning Ordinance outlined above.

The Township understands that the RTFL prohibits municipalities from prohibiting farming by classifying it as a public nuisance. However, The Township is empowered under the Municipalities Planning Code to zone within its jurisdiction. The Commonwealth Court has ruled that municipalities do not violate the RTFL when it establishes a minimum lot size for agricultural operation. In Com., Office of Atty. Gen. v. Locust Twp., the Commonwealth Court determine that the RTFL merely prohibits municipalities from declaring or prohibiting a farm as a public nuisance, but when a township enforces its zoning ordinance it does neither as the zoning ordinance defines a use and provides where it is permitted. Com., Office of Atty. Gen. ex rel. Corbett v. Locust Twp., 49 A.3d 502, 515 (Pa.Cmwlt. 2012); See also In re: Burger, 17 Pa. D. & C.4th 280 (Bucks Ct. Com. Pl. 1992) (Finding that a zoning ordinance was not considered a nuisance ordinance under the Right to Farm Law); See also Kalimootoo v. Middle Smithfield Twp., 125 C.D. 2019, 2019 WL 5884598 (Pa.Cmwlt. Nov. 12, 2019)(Affirming a Zoning Hearing Board decision which, among other findings, concluded that a property did not meet the 10 acre lot size requirement for agricultural use)

We appreciate your office's attention to this complaint, should you require any additional information please feel free to contact the Office of the Township Manager or it's Solicitor.

Very truly yours,

[REDACTED]

[REDACTED]

cc: [REDACTED]