



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

December 21, 2020

Office of Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222

Maidencreek Township
ATTN: Board of Supervisors
1 Quarry Road
Blandon, PA 19510

[REDACTED]
[REDACTED]
[REDACTED]

Re: ACRE Request for Review – Maidencreek Township - Berks County

Dear Board of Supervisors and [REDACTED]

Act 38 of 2005, the Agricultural Communities and Rural Environment (“ACRE”) law, 3 Pa.C.S. §311, *et.seq.*, requires that the Office of Attorney General (“OAG”), upon request of an agricultural owner or operator, review a local government ordinance for compliance with Act 38. The Act authorizes the Office, in its discretion, to file a lawsuit against the local government unit if, upon review, the Office believes that the ordinance unlawfully prohibits or limits a normal agricultural operation (“NAO”).

[REDACTED] filed an ACRE request with this Office. The ACRE complaint is attached for your review. [REDACTED] raises two issues: 1) Maidencreek’s ordinances on the amount of Animal Equivalent Units (“AEU”) permitted violate ACRE; and 2) [REDACTED] should be permitted to run a sheep farm on her property as a prior nonconforming use. The OAG is reviewing the AEU matter and will await the Township’s response before making a final decision as to whether the ordinance violates ACRE.

The prior nonconforming use claim is more a zoning law issue rather than an ACRE matter. That said, the OAG brings to Maidencreek’s attention the law on prior nonconforming use. The Commonwealth Court stated this year:

“A lawful nonconforming use is a use predating the enactment of a prohibitory zoning restriction.” *DoMiJo, LLC v. McLain*, 41 A.3d 967, 972 (Pa. Cmwlth. 2012). However, “[t]he right to maintain a pre-existing nonconformity is available only for uses that were lawful when they came into existence and which existed when the ordinance took effect.” *Hager v. West Rockhill Township Zoning Hearing Board*, 795 A.2d 1104, 1110 (Pa. Cmwlth. 2002). When a lawful nonconforming

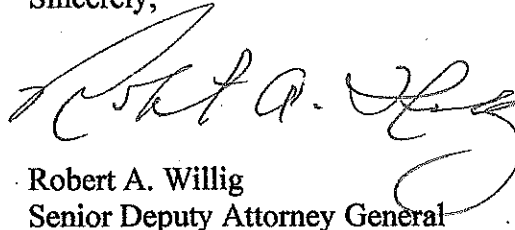
use exists, “the right to continue such use is afforded the constitutional protections of due process.” *DoMiJo*, 41 A.3d at 972. Thus, “[a] municipality is without power to compel a change in the nature of a use where property was not restricted when purchased and is being used for a lawful use.” *Paulson v. Zoning Hearing Board of Wallace Township*, 712 A.2d 785, 788 (Pa. Cmwlth. 1998). “[A] property owner’s right to continue operating a legal nonconforming use on its property is an interest that runs with the land, so long as it is not abandoned.” *DoMiJo*, 41 A.3d at 972.

PAJ Ventures, LP v. Zoning Hearing Board of Moore Township, 225 A.3d 891, 898 (Pa. Cmwlth. 2020). Maiden creek’s own ordinances mirror this law. Section 220-105, *Nonconforming uses of land*, states that “[l]awful uses of land which...become nonconforming...may be continued by the present or any subsequent owner....”

██████████ informs the OAG that ██████████ moved onto the property in 2003 when the land was zoned agricultural. Through the years ██████████ kept horse and cattle on the land and for about thirteen years she ran a dairy operation. Maiden creek rezoned the land as R-1 in 2017 but, according to ██████████ the Township informed her that ██████████ would be able to keep livestock and that ██████████ would be “grandfathered in.” The OAG respectfully submits that the term “grandfathered in” is nothing more than a layman’s term for prior nonconforming use. ██████████ now runs a sheep operation where ██████████ sells the animals for meat and breeding. ██████████ also sells sheep pelts. ██████████ informs the OAG that one further reason the family maintains the sheep operation is so that ██████████ daughter can participate in 4-H competition and activities. Based on the information ██████████ has provided to the OAG ██████████ was engaged in a NAO as that term is defined in the Right to Farm Act (“RTFA”), 3 P.S. § 952, *Definitions*, prior to the 2017 zoning change (horse, cattle, dairy) and ██████████ continues to be engaged in a NAO (sheep) today. It does not appear that ██████████ ever abandoned the agricultural use of ██████████ land based on what ██████████ tells the OAG ██████████ claims that ██████████ was engaged in agriculture from 2003 until the 2017 rezoning and ██████████ continued to be engaged in agriculture from 2017 until the present day. The OAG respectfully submits that based on what ██████████ has told us Maiden creek may have a prior nonconforming use issue on its hands.

It is Maiden creek’s and ██████████ decision as to whether they can resolve the prior nonconforming use matter and allow the sheep operation to continue under the previous agricultural zone standards and not the current R-1 AEU figures. In the meantime, the OAG will await Maiden creek’s response to the ACRE complaint. If you can please respond to this letter within thirty (30) days of receipt of this letter I would greatly appreciate it.

Sincerely,



Robert A. Willig
Senior Deputy Attorney General