

Willig, Robert A.

From: [REDACTED]
Sent: [REDACTED]
To: ACRE Shared Mailbox; [REDACTED]
Subject: [EXTERNAL] ACRE Review Request - [REDACTED]
Attachments: 2021_10_1 Status Review letter [REDACTED].docx; 2021 10 1 Status Review Inspection Report.pdf; Upper Makefield Stop Work Order.pdf; Sheds and Accessory Structures FINAL.pdf

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I own a farm in Bucks County, PA located at [REDACTED]. It is a horse farm that is approximately 20 acres. It is a horse farm with 31 stalls located in Upper Makefield Township. By way of background, we have a fully approved Nutrient Management Plan (see attached) and we are in full compliance.

In early September of this year we began erecting a high tunnel (30x48). This tunnel is situated in the middle of the property next to our indoor horse arena. It is a simple high tunnel (no concrete floor, no electric, no plumbing). When completed, it will be used to store hay and shavings for care of the horses.

That said, on September 29, 2021, Upper Makefield Township issued a stop work order for the "shed/barn" that I was supposedly constructing [REDACTED]. I informed the township that this was a high tunnel and therefore defined as a temporary structure (Act 130). I also informed them that other Acts of the Pennsylvania Assembly further protected high tunnels from requirements of the Uniform Commercial Code (Act 159) and stormwater management plans (Act 15). Their response is to make me complete the following [REDACTED]. They also sent me the attached requirements for barns/sheds...

Thank you for your inquiry regarding the forms required for the High Tunnels.

Please submit the following with your Zoning Permit Application for the High Tunnels :

Zoning Permit Application: <http://uppermakefield.org/wp-content/uploads/2018/11/2018-Zoning-Application1172018.pdf>

Impervious Space Calculations.

Plot Plan. Please submit two sets of plot plans, showing the location of the High Tunnels in relation to the property line.

Insurance. Upper Makefield Township must be listed as "Certificate Holder" on a current Certificate of Insurance for all contractors, electricians and/or plumbers.

If the property owner is doing the work, please provide a copy of the homeowner's liability insurance. Please sign page three of the zoning application for homeowner exemption and have it notarized.

PA Contractor Registration Certificate. Please submit a copy of the contractor's PA Contractor Registration Certificate.

Please let us know if you have any questions or concerns.

Upper Makefield goes on to cite the following as the Section of their Ordinance controlling high tunnels...

Regarding your question regarding code for the Hoop House Ordinance, please see the Joint Municipal Zoning Ordinance (JMZO), Article VIII. §803.A-6.3

Link to JMZO: <https://ecode360.com/31193680#31193680>

The text of this ordinance is below...

Commercial Greenhouse uses shall meet the following requirements:

a.

Minimum lot size: five acres.

b.

Greenhouses include any structure for indoor or enclosed growing of plants, including permanent buildings, hoop houses, and temporary enclosures.

c.

Maximum impervious surface: 10%.

d.

Sales of items grown shall be conducted in accordance with H-15.A, Roadside Stands for Sale of Agricultural Products Grown on Site.

e.

For greenhouses uses on lots of 10 acres or more, a Township approved stormwater management plan is required. All stormwater management facilities as required by the stormwater management plan and the installation of the same shall meet applicable Township standards.

ACTION REQUESTED

I am asking the Attorney General to review this Ordinance as I believe it violates the spirit of Act 130 (treatment of high tunnels as temporary structures) and the letter of Acts 159 and 15, wherein Upper Makefield is requiring contractor registrations, insurance, electrical and plumbing plans and stormwater management plans. This is not a simple form or zoning permit request to, for example, ensure that the high tunnel meets setbacks, etc. That would be fine by me. And easily achievable by the common man. But they are requesting building permits and stormwater management plans that require professionals and sealed drawings.

I believe that the Upper Makefield Ordinance is in direct conflict with state law. It creates onerous requirements above and beyond state law requirements for the purpose of hindering farming and agriculture. By way of one example....Act 15 **REQUIRES** that...

A municipality that has adopted a local ordinance or regulation that regulates high tunnels pursuant to a watershed storm water plan under this section prior to the effective date of this subsection shall amend the ordinance or regulation to comply with this subsection.

Upper Makefield, which utilizes the Newtown Area Joint Municipal Zoning Ordinance, specifically **REQUIRES** a stormwater management plan for high tunnels...in direct contradiction to state law (see below). They never amended their ordinance as we required by Act 15. And they continue to knowingly enforce this provision despite it being in conflict with the government state law.

"For greenhouses uses on lots of 10 acres or more, a Township approved stormwater management plan is required. All stormwater management facilities as required by the stormwater management plan and the installation of the same shall meet applicable Township standards."

In closing, I am requesting that the Upper Makefield ordinance (and indeed the entire Newtown Area Joint Municipal Ordinance as pertains to greenhouses and high tunnels) be stricken and re-written to conform to the spirit and letter of the bi-partisan laws as passed by the General Assembly and signed into law by Governors of both parties.

Thank you,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

As a courtesy, I have copied the representative from Upper Makefield Township.

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