

[REDACTED]

VIA EMAIL

January 10, 2022

Robert A. Willig, Esquire
Senior Deputy Attorney General
1251 Waterfront Place
Pittsburgh, PA 15222

Re: Acre Complaint – Washington Township, Lehigh County

Dear Attorney Willig:

With regard to this matter, according to its website, [REDACTED] commenced operation on March 2, 2021. The property is located in the Rural District of Washington Township. Agriculture is one of the permitted uses in that district, see Section 332.1 of the zoning ordinance. Agriculture is defined, at Section 924 as follows: "the raising and keeping of field, truck and tree crops and all structures and activities customary associated therewith. The term "agriculture" does not include animal husbandry." The ordinance requires that a lot area of 1 acre exist for such uses.

In the case of Commonwealth, Office of Attorney General v. Locust Township, 49 A.3d 502 (Pa. Cmwlth 2012), the court held that local ordinances requiring site plans are not preempted by state regulations. Furthermore, the zoning ordinance is not preempted by state law. The Right-to-Farm Act deals with nuisances that individuals claim and farming operations are conducted, lawfully, on property. It is specifically averred that the municipality is exercising its authority to regulate land use and development and that the information that is required indicates that the applicant must comply with local ordinances. Furthermore, when zoning ordinance regulations of which an applicant is in violation, simply deal with the use, where it is permitted and under what conditions it is allowed. This is not a violation of the Right-to-Farm Act.

With regard to this matter, there are a number of ordinances in place that deal with the types of structures that may be on properties. These ordinances were in place well in advance of [REDACTED] commencing his operation. [REDACTED] did not make any application for a zoning permit nor, as near as we can tell, did he even review the zoning ordinance and its restrictions before he began his operation.

[REDACTED]

The zoning ordinance does preclude the use of truck trailer bodies for accessory storage. In this matter, the fact that the body has been on the property for 57 years does not allow it to be used in any sort of activity on the property. According to the applicant, he only began his farming operation March 2, 2021. If he did not begin his farming operation until that time, clearly the truck body was not used in the "farm" until that time. Therefore, it is not a non-conforming structure and is certainly not a non-conforming structure with regard to the farming operations. Furthermore, the Right-to-Farm Act deals with issues involving nuisance claims. The Township is simply enforcing the zoning ordinance provisions against [REDACTED], because he has chosen not to comply with the same. As indicated above, the cases before the Commonwealth Court have indicated that local ordinances are not preempted by the state law.

In addition, [REDACTED] has an obligation to comply with building codes if he is going to construct items on his property. That is, he must comply with the building code with regard to any fences that he installed and other structures that he installs. None of those ordinances are codes are preempted by the Right-to-Farm Act. The fact that his fence has not been constructed according to code in no way indicates that there is a "nuisance" as the result of the farming operation. It simply indicates that he has failed to comply with township ordinances, which are not preempted by the Right-to-Farm Act, and he must now do so.

In addition, [REDACTED] has indicated that the property was used "primarily as a metal scrap yard prior to his residence four years ago." Therefore, it obviously was not used for agricultural purposes until the last four years. Furthermore, [REDACTED] must comply with zoning ordinance regulations with regard to the commencement of this change of use from the metal scrap yard.

As indicated by the case law cited, the zoning ordinance is not preempted by the Right-to-Farm Act. Neither is the statewide building code. The fact that this gentlemen has chosen to violate those ordinances shows a complete disregard for the law, and should not be rewarded.

The property size for [REDACTED] is 110 feet by 160 feet for a total of 1,700 square feet for 17,600 square feet. The tax assessment for [REDACTED] indicate that the lot is 50 feet by 150 feet or 7,500 square feet. The property at [REDACTED] is 60 feet by 160 feet or 9,600 square feet. The property at [REDACTED] is 80.98 feet by 144.3 feet (irregularly shaped) with a square footage of 10,942 square feet. The total areas of the tracts, therefore, are 28,042 square feet. An acre is 43,500 square feet. The zoning ordinance allows a certain number of poultry to be kept on a property based upon the size of that property. It does not restrict or inhibit the ability to use the property for agricultural purposes, it simply regulates the number of animals that could be kept on a property, especially in a residential district.

In this matter, the Township is not alleging a nuisance, but is simply attempting to enforce the zoning ordinance, the statewide building code, and other ordinances with regard to construction and land use regulations. There is no nuisance claims in this matter nor are we alleging that this "farm" is a nuisance or causes a nuisance. What is being alleged is he did not obtain zoning permit for the use of the property as a farm, that the property does not qualify as a farm under the zoning ordinance, the zoning ordinance was in affect well before he began his

[REDACTED]

operation, and furthermore, he has continued to violate other ordinances and statewide codes. As indicated, [REDACTED] has done nothing to "combine" these various lots into one lot. Therefore, they cannot be lumped together to constitute a "farm." If he wanted to go through the subdivision ordinance, to combine the lots into one lot, he might be closer to the area required for a farm. Nevertheless, he has not done so and there is nothing that precludes these lots from being sold off individually.

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]

cc: [REDACTED]

306880 [REDACTED]