

January 26, 2022

Via Email to: ACRE@attorneygeneral.gov

Office of the Attorney General

Attention ACRE

Strawberry Square, 15th Floor

Harrisburg, PA 17120

Dear Attorney General's Office,

We are [REDACTED] and we are writing to submit the following request under ACRE for the Attorney General's review of the Newtown Area Joint Municipal Zoning Ordinance with respect to its enforcement by Upper Makefield Township against our normal agricultural operation. The Joint Municipal Zoning Ordinance contains provisions regulating agricultural operations that are preempted by state law and regulatory programs and also exceed its local governmental authority under state laws, thus are also an unauthorized local ordinance under ACRE. We set forth the details below and request the Attorney General's review as soon as possible due to the significant impacts on our livelihood.

I. Introduction

We own and operate our farm, [REDACTED] located in Upper Makefield Township at [REDACTED] in Bucks County. We own 8.8 acres where we raise poultry and livestock, including chickens, hens, turkeys, goats, sheep, pigs, and ponies. We also produce a variety of crops and honey. We have a farm stand for our direct commercial sales of the agricultural commodities on the farm. We offer our farm as an operation where the general public can come and experience a working farm and the farm animals as well as purchase our products (such as eggs, honey, meat, pickled and canned fruits and vegetables and other items). This business on our farm is our only source of income. We understand that the PA Right to Farm Act defines a normal agricultural operation as having a minimum of 10 acres OR having at least \$10,000 in gross receipts per year if less than 10 acres. We can show greater than \$10,000 in gross receipts annually from our direct commercial sales of agricultural commodities.

We have a Nutrient Management Plan (NMP) for our farm that was approved by the Bucks County Conservation District. Our NMP accounts for all the livestock and poultry on our farm and approved nutrient management practices for our concentrated animal operation. Our agricultural consultant from TeamAg, Inc. has been to our farm numerous times. Our consultant has stated he sees no resource concerns at all, and that we keep the property very clean and operate with all required best management practices under state law. Our manure management involves the weekly collection of manure from our pastures and animal concentration areas and composting it along with mortalities, which is in compliance with state laws and regulations, including the Nutrient and Odor Management Act, the Domestic Animal Law and the DEP's Clean Streams Law and Solid Waste Management Act regulations.

Upper Makefield Township is part of a joint zoning ordinance with Newtown and Wrightstown Townships that is called the Newtown Area Joint Municipal Zoning Ordinance

(herein referred to as JMZO). You can find the complete Joint Municipal Zoning Ordinance at <https://ecode360.com/NE3758>. We are requesting that the Joint Municipal Zoning Ordinance be reviewed by the Office of the Attorney General for an ACRE review, because we feel there are requirements in the ordinance that duplicate, conflict with or exceed statewide laws and regulations which preempt local ordinances. We set forth the ordinance provisions below with details on the legal issues with the requirements.

II. Background on Upper Makefield Township's Zoning Enforcement

We provide the following background about our situation with Upper Makefield Township's enforcement of the zoning ordinance requirements on our normal agricultural operation. We have explained to the Township that its requirements and restrictions for animal production and direct sales of agricultural commodities violate state law; however, the Township refuses to address the legality of its zoning ordinance provisions. Accordingly, we require the Attorney General's immediate intervention pursuant to ACRE, so that we can continue operating our farm without interruption as we rely upon the farm for our livelihood. We cannot afford, both monetarily and timewise, for this situation to drag out through the court system. We understand that the ACRE program is intended to assist farmers in addressing unauthorized local ordinances so that the farmers do not have to incur exorbitant legal costs when an ordinance is unauthorized. The issues raised with the ordinance provisions herein are identical with ordinances that the Attorney General has taken action against in many prior ACRE cases based on our research.

Our farm is located in the Township's Conservation Management District. JMZO § 401. The majority of properties in Upper Makefield Township are within the Conservation Management (CM) District. The Township's stated intention of the CM District is that: "Agriculture is a significant and an important use of land in the Conservation Management District. For these reasons, uses are permitted in both type and intensity which provide the maximum opportunities for open space in order to protect the natural resources and encourage the continuation of farming activities." JMZO § 305.B. However, from what we have experienced, the Township does not seem to encourage farming activities because the ordinance provisions regulating agriculture violate and are more restrictive than state laws.

In or around March 2020, we opened [REDACTED] The CM District allows agricultural operations and direct sales of agricultural products as permitted by right uses. At the outset of the business, we invited members of the public onto the farm to purchase agricultural commodities from the farm stand located in the center of the Property.¹ We allowed patrons to interact with the animals and experience the working farm firsthand. In the summer of 2021, we began charging a fee for patrons to interact with the animals while on the farm. We did not create this business practice, but rather learned from other area farmers that also allow opportunities for agritourism activities.

From the inception of the farm through the summer of 2021, the Township zoning officer, [REDACTED], who has since passed away, had been to the farm on two (2) separate occasions.

¹ Farm access is provided through the existing driveway, and parking exists by way of a large gravel lot in the interior of the Property.

During these visits, ██████████ inspected the farm, the agricultural structures, and the livestock. The only alleged issue noted by ██████████ related to the amount of chickens on the farm, which he advised was a violation of the local Zoning Ordinance (as discussed below the ordinance provisions limiting animal stocking rates conflict with state law). There were no issues raised with us regarding zoning permits, the allowance of patrons on the farm, or the access to the farm stand.

Nevertheless, the Township issued a Zoning Enforcement Notice to us on or about June 10, 2021. The Notice relayed alleged violations related to the sale of products on site, the farm allowing the public on site as an alleged “agricultural entertainment” use, the amount of poultry on the farm, together with a violation for the lack of a zoning use permit.

Within four (4) days of receipt of the Notice, we applied for a Zoning Use Permit, which was denied by the Township for allegedly being “incomplete.” The reasons expressed for the denial were because we did not include the alleged “entertainment” use within the Permit Application. Since that time, we have also applied for a permit to renovate the farm stand, which was also denied due to the alleged presence of a secondary “entertainment” use. For reasons discussed below, we do not engage in any activity that is defined as an “agricultural entertainment” use under the zoning ordinance and it is simply inapplicable to our farm operations.

Ultimately, we filed a timely appeal of the Zoning Enforcement Notice on or about July 12, 2021. The Township held several zoning hearings and the case remains pending a decision. The Township did not present any evidence showing that we are engaged in any activity that is specifically listed as an “agricultural entertainment” use within the zoning ordinance.

III. Legal Problems with Zoning Ordinance Provisions

Pursuant to ACRE, we own and operate a “normal agricultural operation” because we are engaged in commercial agricultural production that is on “less than ten contiguous acres in area but has an anticipated yearly gross income of at least \$10,000.” 3 Pa. C.S. § 312. The applicable state laws and regulatory programs that render the Township’s zoning ordinance provisions in violation of ACRE include the Municipalities Planning Code (MPC), Right to Farm Act (RTFA), Nutrient and Odor Management Act (NOMA), and Department of Environmental Protection’s Clean Streams Law.

A. The Ordinance Provisions Regulating Animal Agricultural Operations Violate ACRE

The Township permits agriculture and what it calls “intensive agriculture” as well as sales of farm products as permitted by right uses in the CM district under Section 401 (JMZO § 401.A.1.a, .b, .q, .r), but it regulates these uses with requirements that violate state laws under Section 803. JMZO §§ 803.A.A-1.3, A-2; H-15.

We are aware that the Pennsylvania Supreme Court issued a decision in the case of Berner v. Montour Township, 217 A.3d 238, 250 (Pa. 2019) that confirmed the preemption of local regulation by the NOMA with respect to both animal agricultural operations that are not

mandated to obtain a nutrient management plan [NMP] under the Act and to CAOs and CAFOs that are required to obtain a NMP. The Court explained that:

We hold with little difficulty that Section 519 of the Act provides preemption protection from local regulation to both NMP operations subject to the Act's requirements as well as non-NMP operations that are free from them. More specifically, we conclude that the Act preempts any local regulation of nutrient management to the extent the local regulation imposes requirements that are stricter than, inconsistent with, or in conflict with the state law requirements, irrespective of whether a particular agricultural operation has an NMP mandating compliance with the Act.

Berner, 217 A.3d at 250.

The Court also explained that its holding was consistent with the limitations placed on a municipality's authority under Section 603(b) of the MPC that precludes zoning ordinances that would exceed the requirements of the NOMA "regardless of whether any agricultural operation" would be a CAO. Id. at 250 n.17; see also Commonwealth v. Richmond Twp., 2 A.3d 678, 687 (Pa. Cmwlth. 2010) (concluding that the ordinance's conflict with the NOMA necessarily results in a violation of Section 603 of the MPC). Finally, the Court explained that "[a] finding of no preemption would be unreasonable, if not absurd, and would in fact defeat the legislative purpose of establishing statewide criteria which simultaneously protects the public and encourages this important agrarian industry to thrive in Pennsylvania." Berner, 217 A.3d at 250.

Under Section 803.A, the Township's zoning ordinance proclaims that: "Agriculture is an ever-evolving industry. It is the intention of this Section to allow all normal agricultural operations including, but not limited to, the following." JMZO § 803.A. However, the Township's ordinance actually defines and regulates agriculture with requirements that prohibit and limit normal agricultural operations in violation of ACRE, RTFA, NOMA and the MPC.

The Township defines the terms "grazing animal unit" and "non-grazing animal unit" to establish how it limits animal stocking rates for livestock operations as follows:

A "grazing animal unit" is defined as "[o]ne horse, cow or mule; or two donkeys; or four alpaca; or five sheep; or six goats; or one of any other grazing animal not listed. Suckling offspring are included within the same animal unit as the mother until weaned." JMZO § 207.2.

A "non-grazing animal unit" is defined as "Animals that exist in confined pens, cages, buildings or feed lots on feeds typically harvested and fed to the animals." JMZO § 207.3.

The definition for "grazing animal unit" conflicts with and is inconsistent with how state law identifies and regulates animal density on agricultural operations with calculations based on agricultural science.

Under state law, the overall animal density of an animal agricultural operation is determined by first ascertaining the overall animal equivalent units (AEUs)² on the operation based on the number and type of animals and their average weight over their lifespan and then adjusting that number for the actual number of production days the animals are on the operation. 25 Pa. Code § 83.262; PSU Agronomy Fact Sheet 54 (Exhibit A hereto). The animal density is then determined by dividing the total AEUs on the operation by the number of acres suitable for the application of manure. 25 Pa. Code § 83.262, Exhibit A. These calculations require the use of standard animal weights based on the type of animal and average weight over the lifespan of the animal. In addition, the management practices for animal production are different depending on the size and species of animal and type of production operation and these variables are addressed in the state regulations through site specific planning requirements.

By way of explanation, the definition for “grazing animal unit” does not account for the differences in the weight of animals which results in significant disparities on animal stocking rates that conflict with and are inconsistent with the use of AEUs for calculating animal density under state law. 25 Pa. Code § 83.262, Exhibit A. Under state law, the standard animal weights that are used to calculate AEUs depend upon the specific type of animal, sex, and age. See Exhibit A at Table 1. For example, under the ordinance an agricultural operator could have one draft horse that has an average weight of 1,800 pounds or four female alpacas with a total average weight of 725 pounds or five large female sheep with a total average weight of 1,125 pounds. These animal stocking rates conflict with the state law’s regulation utilizing an AEU calculation of 1,000 pounds live weight regardless of the number of animals comprising the unit.

The Township’s regulation of livestock and poultry operations conflict with state regulations, namely the NOMA regulations. The Township’s ordinance requirements found under Section 803.A.A-1.3 and the legal problems with the requirements are set forth below:

Section 803.A.A-1.3.a.1:

Livestock shall not be permitted to over-graze any property in the Jointure Municipalities except during the winter months of November through February. Over-grazing shall be defined as grazing to the point of removing all or almost all vegetative growth from the ground, leaving only one inch or less of cover.

This provision conflicts with the NOMA regulations which permit agricultural operations to establish and manage animal concentration areas (ACAs) using best management practices. 25 Pa. Code § 83.311(c). An animal concentration area is an area that is not a pasture such as barnyards, feedlots, loafing areas, exercise lots and areas that will not be used to maintain a growing crop. 25 Pa. Code § 83.201. The grazing management guidance falls under the NRCS Technical Guide, and ACAs are acceptable according to the NRCS Practice Code 528. The NRCS Technical Guide is incorporated into the NOMA regulations. ACAs or Heavy Use Areas need to be accounted for in a Nutrient Management or Manure Management or Conservation

² An Animal Equivalent Unit (AEU) is 1,000 pounds of live weight of any animal on an annualized basis, regardless of the actual number of individual animals comprising the unit. 25 Pa. Code § 83.201.

Plan. We utilize animal concentration areas on our agricultural operation that are planned and managed in compliance with our approved nutrient management plan.

Section 803.A.A-1.3.a.2:

The keeping of animals other than pets on 10 acres or more of contiguous land shall be governed by Pennsylvania Act 38 of 2005, as may be amended, known as the Agriculture, Communities and Rural Environment Act ("ACRE").

This provision requires animal agricultural operations over 10 acres to comply with the NOMA.³ However, under state law an animal agricultural operation is only required to comply with the NOMA if it is a CAO or a CAFO, which is determined by the animal density calculations discussed above. The amount of acreage of an operation alone does not independently determine whether an operation must comply with the NOMA, thus this provision conflicts with state law.

Section 803.A.A-1.3.a.3:

The keeping of grazing animals including, but not limited to, horses, cows, goats and sheep, on contiguous land consisting of less than 10 acres but greater than three acres, shall be limited to no more than one unit of grazing animals as defined on the first three acres of contiguous land, and one unit of grazing animals per acre for each contiguous acre over three acres

This ordinance provision restricts the number of animals permitted on animal agricultural operations that are less than 10 acres based on the ordinance definition for a "grazing animal unit" which results in restricting an operator to significantly lower animal numbers than those that would be permitted under state law. Under state law, a normal agricultural operation that is less than 10 contiguous acres can produce livestock and poultry in compliance with state regulations for animal density. 3 P.S. § 952, 25 Pa. Code §§ 91.36, 83.262. The Township's severe restriction on animal stocking rates under this section render it impossible for an animal agricultural operation on less than 10 acres to be economically viable and conflict with the state laws that define and regulate normal agricultural operations.

Under this provision, an operator with less than 10 acres could have one cow on the first 3 acres and up to 7 additional cows for up to 10 acres, thus a possible total of 8 cows on 10 acres. An operator could have 5 sheep on the first 3 acres and up to 35 additional sheep for up to 10 acres, thus a possible total of 40 sheep on 10 acres. The SCC and DEP do not impose minimum acreage requirements for animal agricultural operations because they utilize formulas based on agricultural science to identify the animal density of an agricultural operation and impose site specific planning and management practice requirements. 25 Pa. Code §§ 91.36, 83.262, 92a.2. As stated above, the ordinance stocking rate is inconsistent with and conflicts with state regulation based on animal types, weights, age, and production time periods as well as site

³ This ordinance provision incorrectly references ACRE. Act 38 of 2005 enacted amendments to the NOMA program and also established ACRE.

specific issues and production practices, which is inconsistent with and conflicts with NOMA, RTFA and MPC.

For these reasons, the stocking rates are arbitrary and contrary to agricultural science, agricultural best management practices and conflict with state regulations that regulate all animal agricultural operations based on animal density. 25 Pa. Code § 91.36; Berner, 217 A.3d at 250 (holding that a municipality is preempted by the NOMA from regulating agricultural operations with nutrient management requirements that are stricter than, inconsistent with, or in conflict with state law requirements regardless of the size of the agricultural operation).

Section 803.A.A-1.3.a.4:

The keeping of non-grazing animals including, but not limited to, pigs, on contiguous land consisting of less than 10 acres but greater than three acres, shall be limited to no more than five head of non-grazing animals on the first three acres of contiguous land, and five head of non-grazing animals per acre for each contiguous acre over three acres.

This ordinance provision restricts the number of animals permitted on animal agricultural operations that are less than 10 acres based on the ordinance definition for “non-grazing animals” which results in restricting an operator to significantly lower animal numbers than those that would be permitted under state law. A non-grazing animal is defined as an animal that is confined in a pen, cage, building or feedlot. JMZO § 207.3.

Under this provision, an operator with less than 10 acres could have 5 pigs on the first 3 acres and up to 5 additional pigs for up to 10 acres, thus a possible total of 40 pigs in confinement on 10 acres. This means that an operator with less than 10 acres would be limited to raising a very small number of animals in a confined area or building without regard to actual animal density and management practices that are regulated under state law. For all the reasons discussed above, this provision is preempted by the NOMA and beyond the Township’s authority under the MPC, thus violates ACRE.⁴

Section 803.A.A-1.3.a.6:

The keeping of both grazing and non-grazing animals on the same acreage described above will be limited to the maximum number of grazing and non-grazing animals for the acreage provided in the preceding paragraphs.

This ordinance provision permits an animal agricultural operator with less than 10 acres to keep the maximum amount of both grazing and non-grazing animals permitted under the ordinance. Therefore, this provision conflicts with the limitations imposed by the Township for the individual keeping of grazing and non-grazing animals and also with state law for the reasons discussed above.

⁴ For the same reasons, Section 803.A.A-1.3.a.5 limiting the amount of non-grazing animals on less than three acres also violates state law

Section 803.A.A-1.3.a.10:

Commercial livestock operations involving more than the number of head of livestock provided for in § 803.A-1.3.a shall be regulated as Intensive Agriculture, Use A-2.

As set forth above, the limits placed on animal stocking rates by the Township result in keeping animal numbers to very low amounts and conflict with the NOMA animal density formula. This results in the Township defining "Commercial Livestock operations" as operations with animal density that would not be a CAO or CAFO under state law. This conflicts with the NOMA regulations and the identification of animal operations and regulatory requirements under state law.

For these reasons, the Township's livestock stocking rates are arbitrary and contrary to agricultural science, agricultural best management practices and conflict with state regulations that regulate all animal agricultural operations based on animal density. 25 Pa. Code § 91.36; Berner, 217 A.3d at 250.

Section 803.A.A-1.3.b.1:

The keeping of poultry shall be limited to lots which contain at least three acres of land, and shall be limited to no more than 25 head of poultry for the first three acres and up to 25 additional head of poultry per acre up to 10 acres.

This ordinance provision restricts the amount of poultry permitted on agricultural operations that are less than 10 acres which results in restricting an operator to significantly lower amounts of poultry than those that would be permitted under state law. Under state law, a normal agricultural operation that is less than 10 contiguous acres can produce livestock and poultry in compliance with state regulations for animal density. 3 P.S. § 952, 25 Pa. Code §§ 91.36, 83.262. The Township's severe restriction on animal stocking rates under this section render it impossible for an animal agricultural operation on less than 10 acres to be economically viable and conflict with the state laws that define and regulate normal agricultural operations.

Under this provision, an operator with less than 10 acres could have 25 poultry the first 3 acres and up to 25 additional heads of poultry for up to 10 acres, thus a possible total of 200 head of poultry on 10 acres. The SCC and DEP do not impose minimum acreage requirements for poultry production operations because they utilize formulas based on agricultural science to identify the animal density of an agricultural operation and impose site specific planning and management practice requirements. 25 Pa. Code §§ 91.36, 83.262, 92a.2. The Township's use of the term "poultry" conflicts with state regulation of the broad range in the types of poultry raised in agricultural operations and, thus, fails to account for the wide-range in weights, age, production time periods as well as site specific issues and production practices, which is inconsistent with and conflicts with NOMA, RTFA and MPC. Exhibit A at Table 1.

Section 803.A.A-1.3.b.2:

Commercial poultry operations involving more than 25 head of poultry per acre shall be regulated as Intensive Agriculture, use A-2

Simply put, the Township defining “Intensive Agriculture” as an operation with more than 25 head of poultry per acre conflicts with the NOMA animal density formula. This results in the Township defining “Intensive Agriculture” as operations with animal density that would not be a CAO or CAFO under state law. This conflicts with the NOMA regulations and the identification of animal operations and regulatory requirements under state law.

For these reasons, the Township’s poultry stocking rates are arbitrary and contrary to agricultural science, agricultural best management practices and conflict with state regulations that regulate all animal agricultural operations based on animal density. 25 Pa. Code § 91.36; Berner, 217 A.3d at 250.

Section 803.A.A-2.1:

Intensive Agriculture. Intensive agriculture, including but not limited to feedlots, confinement livestock, or poultry operations taking place in structures or closed pens, shall be permitted subject to the following:

1. The minimum site area for such use shall be 10 acres.

Under state law, a normal agricultural operation that is less than 10 contiguous acres can produce livestock and poultry in compliance with state regulations for animal density. 3 P.S. § 952, 25 Pa. Code §§ 91.36, 83.262. The SCC and DEP do not impose minimum acreage requirements for poultry production operations because they utilize formulas based on agricultural science to identify the animal density of an agricultural operation and impose site specific planning and management practice requirements. 25 Pa. Code §§ 91.36, 83.262, 92a.2. The Township does not have authority to impose a minimum acreage requirement on animal agricultural operations because it is inconsistent with and conflicts with NOMA, RTFA and MPC and is a violation of ACRE.

Section 803.A.A-2.5:

If any stream or swale is present, it shall be buffered by a twenty-foot strip outside of the outer edge of the floodplain or alluvial soils. An engineering study shall be required ensuring the stream is adequately protected from pollution.

The SCC’s and DEP’s regulations address best management practices for the protection of all water resources, including any required vegetative buffering. 25 Pa. Code §§ 91.36, 83.294, .351, 92a.29(e). In addition to duplicating and conflicting with state regulations, the Township imposing an engineering study is more restrictive than state regulations.

B. The Ordinance Provisions Regulating Direct Commercial Sales of Agricultural Commodities Violate ACRE

The following ordinance provisions that regulate direct commercial sales of agricultural commodities violate the RTFA and are beyond the Township's authority under the MPC:

Section 803.H.H-15.1.a-.b.1, .4, and .5:

1. The purpose of these regulations is to encourage the continuation of farming and the preservation of farmland by allowing working farmers to market their products and services directly to the public as an accessory use and in a manner that is compatible with the residential character of the Townships and with the Comprehensive Plan of each Township.
 - a. Agricultural products grown by the residents of the property may be sold at a roadside stand on the property. Each roadside stand shall **sell only products grown by the residents of the property** on which the stand is located . . .
 - b. Agricultural Sales of Farm Products. The sale of food, farm and/or agricultural products to the general public shall be permitted, subject to the following regulations:
 - (1) **The minimum lot area shall be 10 acres**
 - (4) Agricultural sales of farm products use is strictly an accessory use which shall be clearly subordinate to principal uses A-1, A-2 and A-6.
 - (5) **Farm products shall be limited to plant material, crops harvested from plants, dairy products, poultry products, meat products, and such things as honey, preserves and jellies made from fruit or vegetable products. Baked goods and related specialty food items made with farm products may also be sold.** Sales of associated incidental items shall be permitted provided they do not constitute more than 25% of annual sales volume in dollars. There shall be no sale of tobacco products, newspapers, magazines or other sundries.

As set forth above, the RTFA defines a normal agricultural operation to include commercial production agricultural operations that are at least 10 contiguous acres or if less than 10 acres have an anticipated yearly gross income of at least \$10,000. 3 P.S. § 952. The RTFA

protects the right for a normal agricultural operation to engage in direct commercial sales of agricultural commodities as a by right use “notwithstanding municipal ordinance, public nuisance or zoning prohibitions.” *Id.* § 953(b). The direct commercial sales are permitted by right by a landowner that produces at least 50% of the commodities sold, therefore, the Township cannot preclude direct commercial sales by designating it as an accessory use or require that all agricultural commodities sold must be produced on the property. The Township cannot impose a 10 acre minimum acreage requirement to engage in direct commercial sales of agricultural commodities because it violates the RTFA and MPC. Finally, the Township cannot regulate or limit the types of agricultural commodities sold so long as the landowner is in compliance with the RTFA’s definition of agricultural commodity.

We own and operate a normal agricultural operation as defined under the RTFA and ACRE and many other state statutes. We produce agricultural commodities and are permitted to engage in direct commercial sales of agricultural commodities on their farm and cannot be precluded by the Township from doing so and, thus the Township’s ordinance provisions violate the RTFA, MPC and ACRE.

C. The Township Cannot Withhold Zoning Permits for Permitted by Right Agricultural Uses Based on the Erroneous Contention that Alfaros engage in an Agricultural Entertainment Use on their Farm

The Township’s alleged violations relating to an agricultural entertainment use on our farm is unsupported by the explicit language of the zoning ordinance itself. The Township is improperly using this allegation to withhold zoning permits for permitted by right agricultural uses that are protected under state law as discussed above. The improper withholding of zoning permits for by right uses violates the MPC, thus is an “as enforced” violation of ACRE.

Section 803.H.H-15.1.c:

This ordinance provision regulates what the Township defines as “Agricultural Entertainment Uses.” We were cited for violating this ordinance section based on the Township’s erroneous contention that our activities fall within the Township’s definition of “Agricultural Entertainment Uses,” which they do not.

Section 803.H-15.1.c provides limitations related to “agricultural entertainment,” detailing the term *specifically* as “the use of a farm for seasonal festivals related to products grown on the farm, craft fairs (including antique shows), municipally-sponsored events, hayrides and horse shows.” See also Section 803.H-15.1.c.7 (listing specific agricultural entertainment uses).

We do not engage in any seasonal festivals, craft fairs, antique shows, municipally sponsored events, hayrides, or horse shows on our farm. We simply engage in direct commercial sales of our agricultural commodities along with allowing patrons to interact with our farm animals to experience and learn about farming and where their food comes from. As is axiomatic in this Commonwealth, zoning ordinances are to be construed expansively such that the landowner is afforded the broadest possible use and enjoyment of his or her land. 53 P.S. §

603.1; see River's Edge Funeral Chapel & Crematory, Inc. v. Zoning Hearing Bd. of Tullytown Borough, 150 A.3d 132, 139 (Pa. Commw. 2016). As such, based upon the very language of the ordinance, our activities do not fall within the Township's ordinance section governing "agricultural entertainment." Accordingly, the Township is abusing its authority in refusing to issue zoning permits for permitted by right agricultural uses on our farm.

As the Attorney General is aware, it is well-established that in recent decades agricultural operators across Pennsylvania and the nation have developed agritourism businesses on their agricultural operations. The agricultural industry recognizes that agricultural operators offer agritourism activities to market, use and sell their agricultural products, provide education on the availability, nature, use and quality of Pennsylvania-produced agricultural commodities, provide education for people to learn where their food comes from, preserve farmland and farm heritage, provide community service and supplement income to sustain operations. Agritourism encompasses activities used to market and engage in direct sales of agricultural commodities in combination with the farm setting, thus is recognized as part of the practices and activities of normal agricultural operations as defined under the RTFA.

The Agritourism Activity Protection Act (AAPA) established civil liability protections for the owners or operators of normal agricultural operations that engage in agritourism activities. 3 P.S. § 2601. Under the AAPA, an "agritourism activity" is defined as "[a] farm-related tourism or farm-related entertainment activity that takes place on agricultural land and allows members of the general public, whether or not for a fee, to tour, explore, observe, learn about, participate in or be entertained by an aspect of agricultural production, harvesting, husbandry or rural lifestyle that occurs on the farm." Id. § 2602. "Agricultural land" is defined as "[I]and that is used for a normal agricultural operation" **as defined under the RTFA.** Id. Accordingly, the use of agritourism activities by normal agricultural operations is recognized under state law in this Commonwealth.

Notwithstanding that our farming operation does not engage in what the Township defines as "agricultural entertainment uses," we submit that the Township's requirement for a minimum of 25 acres to engage in an agritainment use is inconsistent and conflicts with the RTFA that defines a normal agricultural operation to include commercial production agricultural operations that are at least 10 contiguous acres or if less than 10 acres have an anticipated yearly gross income of at least \$10,000. 3 P.S. § 952. The AAPA statute also recognizes the right of a normal agricultural operation to engage in agritourism and provides broad civil liability protection to the owners and operators of normal agricultural operations—as defined under the RTFA—that engage in this use. Accordingly, the Township does not have authority to require a greater minimum acreage for normal agricultural operations that utilize agritourism activities to promote, market and sell their agricultural commodities.

[REDACTED]

ACRE Request

IV. Conclusion

Finally, we researched other ACRE cases that have been reviewed and acted upon by the Attorney General. We would appreciate if the interpretations in the following ACRE cases were considered in this review:

- Lower Milford Township
- Heidelberg and North Heidelberg Townships and Robesonia and Womelsdorf Borough Joint Zoning Ordinance
- Todd Township
- Elk Township
- Highland Township
- Newlin Township
- Huntingdon Township
- Colerain Township
- Walker Township
- Ferguson Township
- Cumberland Township

We appreciate the Attorney General's review of this ACRE request to review the joint ordinance that covers Upper Makefield Township, Bucks County. If you have questions or would like more details, please contact us at [REDACTED] or [REDACTED].

Sincerely,

[REDACTED]
[REDACTED]

Enclosure

Via Email Only To:

cc: Upper Makefield Township Solicitor w/encl.