

February 8, 2022

Attention ACRE
Office of the Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120

Dear Attorney General's Office,

My farm is located at [REDACTED], Exeter Township, Berks County. I have 63.9 acres. I have some concerns with the Exeter Township ordinance that I would like to ask you to review. Specifically, I'd like you to review the burning restrictions placed by the township; the definition of "intensive ag"; and the requirements of CAO and CAFO operations for Special Exception permits. The ordinance is too restrictive for agriculture and have hopes of getting it back in the books to have agriculture land be exempt from what is now on the books. (see attached sheets).

You can find the ordinance on the Township website, specifically at <https://ecode360.com/EX2329?needHash=true>. (I attached this part of the ordinance)

Beginning with Part II, Chapter 136, Open Burning, <https://ecode360.com/8332785>, please refer to these items as being unrealistic for agricultural operations. Open air burning on farms is only allowed on the first weekend of the month between set hours, which may not suit a farmer's schedule or the weather may not cooperate which delays the disposal of items. Also, according to the ordinance, the Authority Having Jurisdiction (AHJ) may suspend burning at any time when it's objectionable or crosses neighboring properties which seems subjective to enforce, and is not realistically controllable due to wind direction and the nature of smoke.

§ 136-2 Open fires and outdoor fires.

A.

It shall be unlawful for any person to open burn any material, including the following at any time in any zone within Exeter Township: household trash, books, magazines, newspapers, cardboard and/or any items that are required to be recycled in Exeter Township under the Pennsylvania Act 101,[1] including leaf waste and scrap lumber or any vegetation, plywood, drywall, plastic products, insulation material, upholstered furniture, garbage, dead animals, human and animal excrement, human and animal hair, rubber products including tires, hydrocarbon products or flammable liquids, asphalt or tar shingles or roofing materials, bedding, foam rubber, nylon, rayon, cotton, wool, polyester or other synthetic material, insulation from copper or other wiring, solid waste and/or construction waste as defined by the Pennsylvania Solid Waste Management Act[2] and 25 Pa. Code § 271.1, except where fire or burning operations result from:

- (1) Any fire set for the purpose of training and instructing authorized personnel in firefighting, and training of persons in the use of portable fire extinguishers (permit required).
- (2) Any campfire or bonfire solely for organized recreational or ceremonial purposes (permit required).
- (3) Any fire set for the prevention and/or control of disease of pests, rats, snakes, bees, etc. (permit required).

(4) The burning of only brush, exclusively for agricultural management and conservation practices and protection, and provided burning is located 100 feet or more from any building or structure. Brush must originate from the same property (first full weekend of the month, permit required).

(a) Burning is permitted from 6:00 a.m. to 6:00 p.m. on Saturday and Sunday. No burning or smoldering shall occur outside of the above-stated hours.

The AHJ may suspend the above regulations at any time when the following conditions exist:

(1) When smoke and/or ash emission are or may be objectionable, offensive or deleterious to human or animal health or permeate or crosses neighboring properties, and/or falls on buildings, vehicles or vegetation.

(2) When extreme dry conditions or drought warrant a ban on all burning.

Also, refer to this

§ 390-35 Environmental performance standards for uses in all zoning districts.

The Township Supervisors shall require safeguards to assure compliance with the following performance standards. Upon request of the Township, a landowner shall furnish proof at his own expense that he is in compliance with the following standards. No use shall be operated in such a manner as to constitute a danger to the residents and inhabitants of Exeter Township.

A. Air management.

(1) Open burning is not permitted except by permit issued by the Exeter Township Fire Marshal.

(2) No gases, vapors or fumes shall be emitted in concentrations which are harmful to persons, property, animals or vegetation (per EPA standards) beyond the lot lines of the lot on which such gases, vapors or fumes originate. No toxic or corrosive gases, vapors or fumes exceeding EPA standards shall be released into the atmosphere.

(3) No use shall emit odorous gases or other odorous matter into the atmosphere in quantities sufficient to be offensive. The guide for determining such quantities of offensive odors shall be the fifty-percent response level of Table 1, "Odor Thresholds in Air" contained in the publication Research on Chemical Odors: Part 1, Odor Thresholds for 53 Commercial Chemicals, October 1968, Manufacturing Chemists Association, Inc., Washington, D.C. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system, so that control will be maintained.

(4) The uses shall comply with the regulations of the Pennsylvania Department of Environmental Protection for fugitive emissions, particulate matter emissions, sulfur compound emissions, standards for sources, sources of volatile organic compounds, emissions of hazardous air pollutants and ambient air quality sources.

I have 30 ash trees that are dying and will need removed in the near future. I would like the option to burn them for removal. I understand why a burning ordinance is important in populated areas, but on farms, where the land is not close to other peoples houses or property, it seems a violation of my ability to due reasonable maintenance and control on a normal agricultural operation. Please take this in to consideration.

DEFINITIONS:

Regarding definitions contained in the ordinance, please refer to Part II, Chapter 390, Zoning.

<https://ecode360.com/8337502> I have some concerns with specific definitions within Chapter 390, Article II including the following:

AGRICULTURE

A. The cultivation of the soil and the raising and harvesting of the products of the soil, including plant nursery and horticulture but excluding forestry;

B. Animal husbandry, poultry farming and dairy farming, excluding kennels.

AGRICULTURE (INTENSIVE)

Specialized agricultural activities, including, but not limited to, mushroom production, certain concentrated animal feeding operations (CAFO), and certain concentrated animal operations (CAO),

which due to the intensity of the production necessitate special control of operation, raw material storage and processing, and the disposal of liquid and solid wastes. The specific thresholds for an operation to be considered an intensive agriculture are contained in § 390-32B.

AGRICULTURE OPERATION

An enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term include an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry.

AGRICULTURE, PASSIVE

The cultivation of the soil and the raising and harvesting of the products of the soil, including plant nursery and horticulture, but excluding forestry. Such uses shall not be permitted within 75 feet of any property line. Passive agricultural uses shall not include the raising of livestock or other animals. The sale of produce shall not be permitted on the premises of the passive agricultural use, except to the extent that the same is permitted as an accessory use (as a roadside stand for the sale of farm products grown on the premises) in the applicable zoning district and subject to compliance with § 390-32A(8).
[Added 6-13-2011 by Ord. No. 713]

CONCENTRATED ANIMAL FEEDING OPERATION (CAFO)

An animal feeding operation where 250 or more animal equivalent units (AEU) are housed inside buildings or in confined feedlots.

CONCENTRATED ANIMAL OPERATION (CAO)

An operation owned or managed by a farmer where animal density exceeds two animal equivalent units (AEU) per acre of land suitable and available for manure application on an annualized basis. The calculation on AEUs per acre involves determining the number of AEUs of production animals on the farm and then adjusting that for the actual number of days (out of 365) that manure is typically produced. To determine the number of AEUs on a farm, the following formula can be used: Total AEUs for each type of animal = [number of animals (average on a typical production day) x animal weight (pounds) ÷ 1,000] x [number of production days per year ÷ 365].

Regarding Zoning Districts, this specifically is the Agricultural Preservation District (AP). The words indicate that agriculture is to be encouraged and preserved, but the reality is that economically viable modern agriculture, including CAFOs and CAOs, is actually not encouraged or supported.

“Intensive Ag” as defined in this ordinance is not a permitted use. It requires a special exception.

390-12-AP, B, (1) says

B. Permitted by right. Land and buildings in an AP District may be used for the following purposes and no others unless a special exception as provided for in Subsection C or conditional use per Subsection D is granted:

(1) All forms of agriculture, horticulture, animal husbandry and dairy farming, except intensive agricultural activities as defined in § 390-6, subject to § 390-32.

(6) Roadside stands for the sale of farm products grown on the premises per § 390-32A(8).

(17)(h) Agritainment activities such as corn mazes and hayrides pursuant to temporary permits issued by the Zoning Officer. (I only see where agritainment is allowed on a temporary basis, not on a permanent basis, unless I’m missing something).

C. Uses permitted by special exception. The following uses are permitted when special exceptions are granted by the Zoning Hearing Board in accordance with § 390-96H:

(1) Intensive agricultural activities, subject to the applicable requirements of § 390-32.

The requirements for Ag use regulations can be found at <https://ecode360.com/8338399>

Requirements that I would like the OAG to look at closer include:

§ 390-32 Agricultural use regulations.

A. General agricultural standards.

- (1) Agricultural uses shall be conducted on a farm which shall be a minimum of three acres in size.
- (2) General agricultural uses shall be limited to a maximum of 2.0 animal equivalent units per acre of land suitable and available on the farm for manure application on an annualized basis. Uses exceeding 2.0 animal equivalent units per acre are classified as intensive agricultural uses and are subject to the intensive agricultural standards of Subsection B. Animals not defined in the AEU table of § 390-6 shall be limited to one per acre.
- (3) No farm or any other outbuilding other than a dwelling shall be constructed closer than 75 feet to any property line.
- (5) No slaughter area or manure storage shall be established closer than 200 feet to any property line.
- (6) Except as noted in the AP Zoning District, no more than one single-family detached dwelling shall be permitted for each farm.
- (7) To control erosion and pollution, a buffer zone of 12 feet or as required by the Exeter Township Floodplain Ordinance,[1] whichever is greater, shall be established from the edge of all streams, which shall be kept in an all-season ground cover.
- (8) The sale of farm products is subject to:
 - (b) At least 50% of such products shall have been produced on the property on which they are offered for sale.

B. Intensive agricultural standards.

- (1) Intensive agricultural activities shall include the following:
 - (a) A concentrated animal operation (CAO) in excess of 2.0 animal equivalent units per acre of land suitable and available on the farm for manure application on an annualized basis.
 - (b) A concentrated animal feeding operation (CAFO) where 250 or more animal equivalent units (AEU) are housed inside buildings or in confined feedlots.
- (2) No structure used for an intensive agricultural activity shall be located within 400 feet of any lot line unless a lesser distance is permitted by Act 6 or any other applicable state law.
- (3) All lots for such uses shall have a minimum size of 25 acres, unless a larger lot size is required elsewhere in this chapter.
- (4) All open storage shall be screened in such a manner that it shall not be visible from any point on the lot lines.
- (5) No more than three persons not related to the family operating the use shall be housed on the lot.
- (6) All buildings and structures designated for the use of any regulated activity shall be painted and maintained in good condition.
- (7) A fence shall be maintained around all areas in which animals are kept outside of buildings.
- (8) Solid and liquid waste shall be disposed of in a manner to avoid creating insect or rodent problems, a public health problem or a public nuisance. Noxious, unpleasant gases or odors of any kind shall not be emitted in such quantities as to be detectable outside the lot lines of the tract occupied by an intensive agricultural operation. (Seems open to subjective enforcement).
- (9) A nutrient management plan shall be prepared for all proposed intensive agricultural uses. The nutrient management plan shall be submitted to the Township and shall be reviewed and approved by the Berks County Conservation District.
- (10) All aspects of mushroom production shall be in accordance with best practices for environmental protection in the mushroom farm community, prepared under the authority of the Solid Waste Management Act (35 P.S. § 6018.101 et seq.) and regulations at 25 Pa. Code Chapter 289, effective date December 12, 1997. The commercial production, processing, or cultivation of mushrooms shall be construed as an intensive agricultural activity and therefore shall comply with the applicable requirements of Subsection B.

(11) No discharge of liquid waste and/or sewage shall be permitted into a reservoir, sewage or storm disposal system, holding pond, stream or other open body of water, or into the ground unless treated so that the discharge is in total compliance with the standards approved by the appropriate local, state and federal regulatory bodies and/or agencies.

(12) All on-site composting shall be performed under roof in a partially enclosed structure having impervious flooring with drainage and suitable protection so as to insure that there is no runoff from said structure onto surrounding lands. (The PA Domestic Animal Disposal Act covers proper disposal of livestock and poultry, and does not require composting to be in buildings).

(13) All organic materials to be used in on-site composting shall be stored under roof in a totally enclosed structure having impervious flooring with drainage and suitable protection so as to insure that there is no runoff from said structure onto surrounding lands.

Thank you for considering my request to review the ordinance for Exeter Township, Becks County. If you have questions or would like more details, please contact me at my home phone number [REDACTED].

Sincerely,

[REDACTED]