

[REDACTED]
ATTORNEY AT LAW

June 10, 2022

Via U.S. Mail and email at: [REDACTED]

Robert A. Willig
Senior Deputy Attorney General
Office of Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222

RE: ACRE Request for Review – North Beaver Township – Lawrence County

Dear Attorney Willig:

I am writing to you in my capacity as Solicitor for North Beaver Township, Lawrence County in response to your May 12, 2022 correspondence.

Enclosed please find a copy of North Beaver Township Ordinance No. 21-1-4-1 (the "Ordinance") for your review. The copy of the Ordinance which was enclosed with your request is a previous redlined draft of the Ordinance, not the final draft adopted by the Board of Supervisors.

Moreover, it is the Township's position the Ordinance is in compliance with Act 38 of 2005, and does not unlawfully prohibit or limit a normal agricultural operation. In particular, Ordinance No. 21-1-4-1 permits Accessory Solar Energy Systems (ASES) as a use permitted by right in *all zoning districts* within the Township. See, Ordinance, Section 2.A.1. Accessory Solar Energy Systems are defined as those which supply electrical power "primarily for personal on-site consumption and not for regeneration to another party." Ordinance, Section 1. Under the Ordinance, only Principal Solar Energy Systems (PSES), or those which are designed to generate electricity for use off-site, are restricted to the Industrial District pursuant to a conditional use.

Moreover, prior to the adoption of Ordinance No. 21-1-4-1, the North Beaver Township Zoning Ordinance did not permit solar facilities at all. Ordinance No. 21-1-4-1 was adopted by the Board of Supervisors in order to permit solar uses within the Township, with appropriate limitations for public safety, health and welfare.

As you are no doubt aware, 3 P.S. § 952 defines "Normal Agricultural Operations" as:

The activities, practices, equipment and procedures that farmers adopt, use

or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is:

- (1) not less than ten contiguous acres in area; or
- (2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least \$10,000.

The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the act of December 12, 1994 (P.L.944, No.134), known as the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice. (2 amended May 15, 1998, P.L.441, No.58)"

3 P.S. § 952.

While the term "normal agricultural operation" was meant to be read expansively (See, Gilbert v. Synagro Cent., LLC, 131 A.3d 1 (Pa. 2015)), it is the Township's position that a solar energy facility designed to generate power primarily for use off-site is not a "normal agricultural operation."

Pennsylvania Courts interpreting this term have found certain technologically advanced methods of farming to constitute "normal agricultural operations" where such operations or activities are for use on the farm property itself. See, Gilbert v. Synagro Cent., LLC, 131 A.3d 1 (Pa. 2015) (holding that the use of biosolids as fertilizer on the farm was a "normal agricultural operation"); Branton v. Nicholas Meat, LLC, 159 A.3d 540 (Pa. Super. Ct. 2017) (finding the spreading of food processing waste (FPW) on farmland as a fertilizer and the storage of such FPW on site were "normal agricultural operations"); Lancaster Cty. Agric. Pres. Bd. v. Fryberger, 257 A.3d 192,205 n. 17 (Pa. Super. Ct. 2021) (concluding the distribution of treated wastewater through an irrigation system on the farm was a "normal agricultural operation"); and McCabe v. Dagostin, 2017 Pa. Dist. & Cnty. Dec. LEXIS 421, at *8 (Ct. Com. Pl. 2017) (finding the use of Concentrated Animal Feeding Operation (CAFO) and the spreading of liquid swine manure on farmland were "normal agricultural operations").

By contrast, the generation of electricity for use off-site is an entirely different use which does not constitute a "normal agricultural operation." The Commonwealth Court reached a similar conclusion in Tinicum Township v. Nowicki, 99 A.3d 586 (Pa. Cmwlth. 2014), holding that a mulching operation did not fall within the definition of a "normal

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agricultural operation" where "none of the raw materials from the mulching operation are produced on the Property and none of the resulting mulch is used for the production of livestock, crops, or agricultural commodities on the Property". Id. at 593. In Nowicki, the Court determined the "definition of 'normal agricultural operation' necessarily requires some connection between the use at issue and the employment of the property in question for the production of an agricultural, agronomic, horticultural, silvicultural, or aquacultural crop or commodity." Id. Principal Solar Energy Systems, used to generate electricity for use off-site, are analogous to the mulching at issue in Nowicki. While the electricity may be generated on-site, it is to be distributed for use off-site, not on the farm itself. An Accessory Solar Energy System, which would generate electricity for use on-site at a farm, is clearly permitted under the North Beaver Ordinance, as a use by right in all zoning districts.

Accordingly, it is the Township's position the Ordinance does not prohibit or limit a normal agricultural operation, as that term has been defined by the Pennsylvania Legislature and interpreted by the Pennsylvania Courts.

Please do not hesitate to contact my office if you have any questions or if you require any additional materials from the Township. The Township is willing to cooperate in any way to ensure your full review of this matter.

Thanking you, I remain,

Very truly yours,

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Enclosures

cc: North Beaver Township