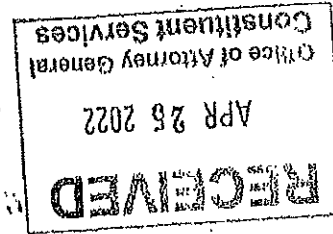


March 28, 2022

The Honorable Joshua Shapiro  
Attorney General of Pennsylvania  
Strawberry Square, 16th Floor  
Harrisburg, PA 17120



Dear Attorney General Shapiro:

I am writing to request that the Office of Attorney General review under the Right to Farm Act an ordinance adopted by North Beaver Township, which bans the installation of PV solar arrays on farms.

The Office of Attorney General's website states the following, concerning Act 38 of 2005 (<https://www.attorneygeneral.gov/resources/acre/>):

"On July 6, 2005, Act 38 also known as "ACRE" (Agriculture, Communities and Rural Environment) went into effect to ensure that ordinances adopted by local governments to regulate normal agricultural operations are not in violation of state law. A local ordinance cannot exceed, duplicate or conflict with state law.

An 'unauthorized local ordinance' is an ordinance enacted or enforced by a local government unit which does either of the following:

- Prohibits or limits a normal agricultural operation unless the local government unit has authority under state law to adopt the ordinance and it is not prohibited or preempted under state law.
- Restricts or limits the ownership structure of a normal agricultural operation."

The Act of Jun. 10, 1982 – commonly referred to as Pennsylvania's Right to Farm Act – enshrined a doctrine of agricultural rights within Pennsylvania law, which ACRE was written to empower. The Act contains the following language which defines a "normal agricultural operation":

"Normal agricultural operation." 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."

I own and operate a 200 acre farm in North Beaver Township, Lawrence County. I have proposed to build a photovoltaic (PV) solar system on my farm, pursuant to the Right to Farm Act. Solar arrays, like the original wind and water-powered feed grinders (still in use in parts of Pennsylvania), are fueled by the elements. Such agricultural renewable energy use has been the

provenance of farmers around the world since the ancient Romans invented the first solar powered machine and the Dutch perfected windmills in the 1400s.

In present-day application, wind, solar and geothermal energy is increasingly utilized by farmers. Ed Johnstonbaugh, who leads the Penn State College of Agricultural Sciences Clean and Renewable Energy Program, recently put it this way: "In many ways, it's like producing a crop 365 days a year, except that your crop is electricity" (<https://www.morningagclips.com/pa-farm-energy-day-scheduled-for-march-15/>).

Here is what the PA farm bureau recently said about solar on farms (in public testimony presented earlier this year):

"Broadly speaking, Pennsylvania Farm Bureau is supportive of solar energy. Our energy platform embraces an all-of-the-above approach that makes our country less dependent on foreign energy sources. It also acknowledges that landowners are in the best position to determine how to use their land for energy development, be it for natural gas leasing, wind energy, or solar. Solar is already used on farms, typically by farmers who want to use renewable energy to supplement energy usage on their farms. There are more than 4,100 farms that use some form of renewable energy as part of their businesses, with solar leading the way. Nearly all of the solar installed on Pennsylvania farms is for on-farm energy generation. However, given the level of activity that we have seen in landowners being approached with leases, and the Governor's recent proposal to power state buildings with renewable energy, we anticipate that a larger portion of farm ground will be converted to solar... Unlike other development of farmland, these systems are not permanent. They are designed to be removable, so decades in the future a farmer could grow crops or graze animals on that land" (<https://dingo.telicon.com/pa/library/2021/20210512TV.PDF>).

Unfortunately, and in spite of efforts to provide the historical and legal background for our local officials, North Beaver Township, Lawrence County recently passed an ordinance banning the installation of PV solar arrays on farms. You can see in the attached ordinance where a red line now strikes out the word "agricultural" -- to signify that solar is appropriate for use on land zoned under any other category in the Township, but not on farmland. It is my belief that this ordinance is unauthorized by the Commonwealth of Pennsylvania, pursuant to the Acts referenced in this letter, and is a violation of my Right to Farm.

It is also of interest that North Beaver Township provides for the development of any other kind of energy project on farms, except for solar. If I want to build a coal mine, host a natural gas well pad, or install a hydro generation system, I can do any of these things under the local ordinances, on my farm. I just can't install solar. Under the Right to Farm Act, ordinances cannot regulate different types of farming based solely on the type of production (e.g., allowing cattle farms but not sheep farming or corn but not wheat). The same should be the case for the type of energy our farms generate.

This ordinance is unduly restrictive and strips away the right of farmers, and farmers alone, from utilizing their land to produce solar energy.

I hereby request an ACRE review of this ordinance by your office. (I have included a copy of the ordinance.) I would be happy to discuss this matter with you and your ACRE attorneys in greater detail, at your convenience.

Sincerely,

[Redacted signature and name]  
[Redacted address line 1]  
[Redacted address line 2]