

[REDACTED]

March 23, 2023

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

RE: [REDACTED] Upper Hanover Township, Montgomery County, PA

Dear Mr. Willig:

In my capacity as solicitor to Upper Hanover Township, I offer this letter in opposition to the assertion made by [REDACTED] that the Township's Notice of Violation dated September 6, 2022 (copy attached) is in violation of the Agricultural Communities and Rural Environment Law. Specifically, I am responding to the assertions in an email from [REDACTED] to you dated November 3, 2022, and a follow-up email from him to you dated November 16, 2022. The first email challenges the Township's shutting down of the farm stand on his property at [REDACTED]. The second provides some details regarding the farm stand but also challenges the portion of the violation notice that related to the number of animals on the property.

It is noted that in November 2021, [REDACTED] wife [REDACTED] wrote to you an asserted an ACRE violation when the Township violated them for barking dogs. Your office declined to advance that matter and the [REDACTED] did not attempt to do so on their own.

In the present instance, the violation notice is based upon the lot being smaller than required by the zoning ordinance for operation of a farm stand, and separately, because the animals on site exceed in number the allowance given for them in the ordinance.

With this letter you will find the Board of Assessment printout for the parcel, showing that it is 2.94 acres in size, and zoned *single family residential (R-1)*. Also included is an aerial view of the property, showing its proximity to an office park and other single-family homes. This is not a farm. It is a single-family home seeking to engage in agricultural activity as an accessory use.

[REDACTED]

Ordinance 500-808, upon which the zoning officer relied, is correctly quoted in the enforcement letter, and provides that a farm stand requires a 5-acre lot and that 75% of the products sold be grown on site. The parcel is only a little better than half the size required by the ordinance, and the Township is unaware that any proof has been offered that $\frac{3}{4}$ of the items sold at the farm stand were grown there (the Township can establish that items from off-site are sold there but does not have hard numbers).

Neither does the parcel come anywhere near compliance with the numerical limit for animals. The ordinance allows 8 goats or animals of similar size, and the [REDACTED] have 20 goats, 5 sheep and 2 emus, for a total of 27 animals of that approximate size, or a 300 percent exceedance, and all of it on a predominantly residential street.

The [REDACTED] do not enjoy ACRE protection from enforcement of the ordinance because they are not operating a farm. Neither the Right to Farm Act nor ACRE expressly defines what a farm is, focusing on the activity being conducted, but they do refer to the activity being undertaken by "farmers", whereas the [REDACTED] are better described as residents. Requiring that the property in question meet the definition of "farm" is consistent with the very reason that these laws were enacted, which was to protect farmland, i.e., "geographic areas where agriculture has traditionally been present." See, *Tinicum Township v. Nowicki*, 99 A3d 586 (Pa. Cmwlth. 2014). It is also noted that while a farmer may of course reside on the farm, courts have recognized the dictionary definition of a farm as land "devoted to special or general cultivation", i.e., with such activity as its primary purpose. *Commw v Hammond*, 4 Pa D&C 2d 577 (1955).

Our courts have often recognized that when a use is accessory to another use, it is by definition less intense than when the same activity is the primary permissible use on the property. See, e.g., *Tirpak v Borough of Summit Hill*, 515 A.2d 1018 (Pa. Cmwlth 1986), where the Court upheld a zoning violation for the keeping of a one-thousand-pound pig in a residential district, and noted the difference between raising animals in a farming district versus a residential district.

The Attorney General's online pamphlet explaining the operation of the ACRE law includes examples of successfully challenged ordinances that went too far in regulating agricultural activity: limits on mushroom composting, draconian waste disposal requirements for intensive

Robert Willig, Esquire

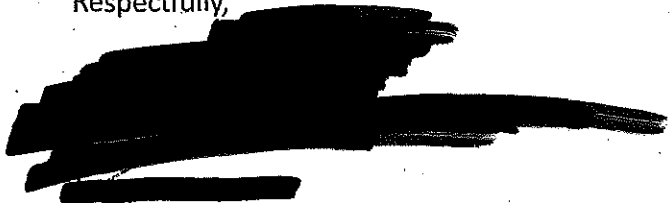
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farming, regulating the way biosolids are applied to land. All of these were regulations of the process of farming, and all of them of a magnitude far greater than reasonable limitations placed on an accessory use in a residential zoning district. The Township has not by ordinance imposed itself on a normal agricultural operation because an accessory use in a residential zoning district is not a normal agricultural operation. Further, even if an accessory use were subjected to full ACRE scrutiny, requiring the farm stand to sell products grown there, and placing some limit on the number of animals on a 2.9-acre lot, are inherently reasonable.

Thank you for your consideration of the Township's position.

Respectfully,



cc: 

Enclosures



UPPER HANOVER TOWNSHIP

1704 Pillsbury Road
P.O. Box 27
EAST GREENVILLE, PA 18041
(215) 679-4401
FAX (215) 679-3585

September 6, 2022

NOTICE OF VIOLATION

[REDACTED]

RE: Animals and Farm Stand
[REDACTED]
Upper Hanover Township, PA
[REDACTED]

Dear [REDACTED]:

LTL Consultants Ltd. serves as the Code Enforcement Official for Upper Hanover Township. During a recent inspection of the above referenced property, violations of the Upper Hanover Township Zoning Ordinance were noted. This letter explains each violation, the relevant Chapter of the Ordinance that has been violated, what you need to do to bring the property into compliance, possible penalties for noncompliance and appeal procedures, if available.

VIOLATED SECTIONS OF THE CODE OF UPPER HANOVER TOWNSHIP,
Chapter 500, Zoning, as adopted by Ordinance No. 97-1, dated May 13, 1997 as amended.

§500-808 Accessory uses.

The following accessory uses shall be permitted, subject to the additional requirements herein.

A. Uses accessory to agriculture:

- (2) **Retail sale of agricultural and/or horticultural products on a minimum tract of five acres in compliance with the following:**

- (a) **At least 75% of such products shall have been grown on the property on which they are offered for sale.**

B. Permitted residential accessory uses and structures.

- (4) Shelter for small domestic animals and domestic farm animals as permitted by §500-808B (8) and (9) herein.
- (8) The keeping of domestic farm animals, not in conjunction with agriculture, in accordance with the following:
 - (a) Minimum lot size shall be two acres.
 - (b) Building setbacks shall comply with §500-808.A (3) herein.
 - (c) Such animals may be kept at the following rates:

	On a Minimum Two- Acre Lot	For Each Additional Acre
Horses, cows, or other animals of a similar size	1 animal	1 animal
Sheep, goats, or other animals of a similar size	4 animals	4 animals
Fowl or other animals of a similar size	10 animals	10 animals

DESCRIPTION OF VIOLATIONS:

1. The size of your property is approximately 3 acres. You are required to have a minimum of 5 acres in order to operate a farm stand.
2. On a 3 acre property, you are permitted to have a maximum of 2 horses, cows or other animals of a similar size; a maximum of 8 goats, sheep or other animals of a similar size; and a maximum of 20 fowl or other animals of a similar size.

During our inspection of your property, we witnessed the following animals: 2 cows; 20 goats, 5 sheep and 2 emus; and approximately 91 fowl of various types. This number of animals is well in excess of the number of animals allowed on a 3 acre property.

REQUIREMENTS FOR COMPLIANCE:

1. Cease the operation of a farm stand on the property immediately.
2. Remove the required number of animals from the property such that the property contains no more than the maximum allowed number of animals in each size category as listed above. This would require the removal of existing animals such that the total number of goats, sheep and emus is a maximum of 8 and would also require the removal of fowl such that the total number of fowl is a maximum of 20.
3. Compliance shall commence upon receipt of this Notice and be completed no later than October 5, 2022. Failure to comply with this notice within the time specified by this notice, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible penalties as described below.

RIGHT TO APPEAL:

Any person or persons shall have the right to appeal a decision of the Zoning Officer to the Zoning Hearing Board in accordance with the procedures described in Article VI, Section 605 of the Upper Hanover Township Zoning Ordinance of 1997, as

amended. An application for an appeal shall be filed on a form obtained from the Township Secretary within thirty (30) days of the date the Notice of Violation was issued. You also have the right to request a Variance from the Zoning Hearing Board.

PENALTIES:

Any person, partnership, corporation or other legal entity who or which has violated or permitted the violation of the provisions of this Zoning Ordinance shall, upon being convicted or found liable therefor in a civil enforcement proceeding commenced by the township, pay a judgment of not more than \$600 per violation, plus all court costs, including reasonable attorney's fees incurred by the Township as a result thereof; or, if convicted in a summary criminal proceeding, pay a fine not to exceed \$1,000 per violation, or imprisonment of not more than ninety days or both.

Please contact LTL Consultants, Ltd. at 610-987-9290 if you have any questions regarding the content of this letter.

Respectfully,

[REDACTED]
[REDACTED]
LTL Consultants, Ltd.
Upper Hanover Township
Code Enforcement Officer

CERTIFIED MAIL #7022 0410 0002 7856 5618 AND FIRST CLASS MAIL

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PARID: [REDACTED]

DUPEE [REDACTED]

Parcel

TaxMapID [REDACTED]
Parid [REDACTED]
Land Use Code 1101
Land Use Description R - SINGLE FAMILY
Property Location [REDACTED]
Lot # 2
Lot Size 2.94 ACRES
Front Feet 50
Municipality UPPER HANOVER
School District UPPER PERKIOMEN
Utilities WELL/SEPTIC/

Owner

Name(s) [REDACTED]
Name(s) [REDACTED]
Mailing Address [REDACTED]
Care Of [REDACTED]
Mailing Address [REDACTED]
Mailing Address [REDACTED]

Current Assessment

Appraised Value [REDACTED] Assessed Value [REDACTED] Restrict Code [REDACTED]

Estimated Taxes

County [REDACTED]
Montco Community College [REDACTED]
Municipality [REDACTED]
School District [REDACTED]
Total [REDACTED]
Tax Lien [REDACTED]

Last Sale

Sale Date [REDACTED]
Sale Price [REDACTED]
Tax Stamps [REDACTED]
Deed Book and Page [REDACTED]
Grantor [REDACTED]
Grantee [REDACTED]
Date Recorded [REDACTED]

