



December 23, 2022

[REDACTED]

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

Re: [REDACTED]
ACRE Request for Review
Upper Tulpehocken Township,
Berks County
[REDACTED]

Dear Mr. Willig:

This correspondence serves as the requested response of Upper Tulpehocken Township, Berks County ("Township") to the complaint of [REDACTED], [REDACTED] against the Township under Act 38 of 2005, 3 Pa. C.S.A §§ 311, *et seq.* ("ACRE"). As you acknowledge in your letter dated December 6, 2022, this is the second complaint that [REDACTED] has filed against the Township under ACRE. [REDACTED] filed an initial claim earlier this year, requesting suit by the Office of Attorney General ("OAG") against the Township under ACRE. By letter dated August 2, 2022, you stated that OAG denied the complaint and declined to file a lawsuit against the Township. Since August, [REDACTED] has not taken further action to proceed on her own with the complaint of an alleged unauthorized ordinance, in the manner explained in your letter.

The second complaint should be denied for the same reasons as the first complaint. First and foremost, the ordinance of which [REDACTED] complains, which is the Township's Ordinance adopting and enforcing the Uniform Construction Code, is expressly authorized by Pennsylvania law. ACRE prohibits unauthorized ordinances, and defines such ordinances as follows:

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 ordinance at issue, requiring a building permit for commercial structures, is one which was expressly authorized by State law. The Pennsylvania Construction Code Act, Act 45 of 1999, 35 P.S. §§ 7210.101 through 7210.1103, specifically requires that municipalities adopt the Uniform Construction Code ("UCC"), and under Section 158-2 of the Upper Tulpehocken Township Code of Ordinances ("Township Ordinances"), the Township adopted and incorporated the UCC by reference. Under Section 158-1 of the Township Ordinances, the Township exercised its option to administer and enforce the Pennsylvania Construction Code Act. The UCC, as contained in 34 Pa. Code, Chapters 401 through 405, was adopted as the Township's Building Code, and among the Building Code regulations is the requirement of building permits. The UCC and its application to a building used for a commercial purpose does not prohibit or limit any agricultural operations on the property. To the contrary, the growing and cutting of mint and the production of mint products has been ongoing. Further, there is nothing in the UCC Ordinance in question which restricts or limits the ownership of the property in question. It is owned by [REDACTED] and her husband, and that has not been the subject of any enforcement or attempt at enforcement.

Second, the matter at issue is an interpretation of whether the building addition housing the cooler for [REDACTED] bottled mint tea product is a commercial building requiring a permit or an agricultural building falling under the UCC exemption is a question of law. Since [REDACTED] made the original complaint to OAG, nothing has changed. The UCC Board of Appeals made a decision in [REDACTED] favor, and the Township has appealed to the Court of Common Pleas under the Pennsylvania Local Agency Law. The question is pending in the Court of Common Pleas of Berks County, which last week issued a remand order to correct a procedural concern by the assigned Judge on the UCC Board's Findings of Fact. The matter will be fully briefed and argued before the Court in the next several months. There have, however, been no additional ordinances adopted, or even additional enforcement actions against [REDACTED]. The hearsay statements in the complaint regarding the Pennsylvania and Berks County Farm Bureaus, and the Farmland Preservation Director are irrelevant to whether the Township Ordinances attempt to regulate in a pre-empted area in conflict with State law, which is the matter at issue in an ACRE case. In this case, the sole issue is interpretation and

application of the UCC, where the local regulation does not exceed state law with respect to agriculture.

This case is highly distinguishable from ACRE cases pursued by OAG. The ACRE cases generally involve requirements with respect to odor or insect control, biosolids application on farm fields, or manure storage which are beyond what is provided in state law on those topics. Other cases pursued more recently, as shown on the OAG/ACRE website, specifically single out agricultural activities for additional regulation and scrutiny, such as requiring excessive road bonding or additional detail in erosion and sedimentation control plans for timber harvesting, or precluding production of an agricultural product and treating it as manufacturing because the product was not a food. These regulations directly impacted methods of farming and/or the operations of a farm. In this case, the question presented is whether the building is a farm building because it is used for the last stage of production of the product (cooling), which is reduced from mint leaves, boiled, sweetened, and bottled, or whether it is a commercial building, as the Township has maintained. This is a legal interpretation issue which is appropriately in the hands of the Court of Common Pleas. It is not an interference with farming, an application of stricter local law in a pre-empted area, or a nuisance action against a lawfully operating farm.

In sum the question is one which arises under the UCC, and not ACRE laws, the Agricultural Security Act, or the Right-to-Farm Law. The decision is whether the addition is a commercial building, and a part of a factory operation. OAG correctly found that this was not a case properly brought under ACRE, and no underlying facts have changed. There have been no new enforcements, and [REDACTED] is continuing her production activities on her property. Accordingly, the OAG should continue to simply allow the matter to be determined by the Court, and the Township asks that the Complaint be dismissed.

Please contact me if you have any questions for the Township. Thank you for your attention to this matter.

Very truly yours,

KOZLOFF STOUT
Professional Corporation

[REDACTED]

cc:

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